United States Court of Appeals

for the Second Circuit

APPENDIX

77-7164

In the

United States Court of Appeals

For the Second Circuit

George Duckett and Delores Duckett,

Plaintiffs-Appellants,

v.

Eve Silberman,

Defendant-Appellee.

UNITED STATES COURT OF APPEALS
FILED
MAY 6 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

B 8/5

APPENDIX

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PLAINTIFFS		DEFENDANTS
DUCKE[illegible], [illegible], et ano	1A	SILBERMAN, Eve
GEORGE DUCKETT and DELORES DUCKETT		EVE SILBERMAN

CAUSE

28 U.S.C. § 1343
RACIAL DISCRIMINATION IN HOUSING

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UNITED STATES DISTRICT COURT DOCKET

DC-111 (R

DUCKETT vs. SILBERMAN

2A

DATE	NR.	PROCEEDINGS
-20-75		Complaint filed. Summons issued.
/29/75		Cross Notice of Mo for to vacate subpoena and for a summary judgment, etc. ret 10/31/75 filed. (2)
/29/75		Affirmation in Opposition for order for Preliminary Injunction filed. (3)
-30-75		By PLATT, J. - Order to show cause dtd 10-20-75 for an order to enjoin deft from maintaining a policy of discriminating against blacks seeking to purchase housing, ret 10-31-75 at 2 P.M. filed. (4)
		Clerk's order for personal service of summons & complaint filed. (5)
-3-75		
-31-75		Before PLATT,J.-Case called. Defts motion to vacate subpoena and for summary jdugment adj'd to 11-4-75.)mg) ---
-31-75		Before PLATT,J.-Case called. OTSC to enjoin deft from maintaining a policy of housing discrimination etc adj'd to 11-4-75. (mg) ---
-6-75		Before PLATT,J.=Case called. Hearing ordered and begun. Deft's motion to dismiss. Decision reserved.Order to show cause to enjoin deft from maintaining a policy of housing discrimination and deft's motion to vacate subpoena and for summary judgment argued. Decision reserved. All papers within two weeks. Hearing concluded. --
24/75		By PLATT,J.- Order dated 11/24/75 filed that the time for the deft to answer the complaint is extended to 12/10/75 (6)
10/75		Pltff's Proposed Findings of Fact and Conclusions of Law filed. (7)
-19-75		Pltff's demand for trial by jury filed. (8)
26-76		By PLATT, J.--MEMORANDUM AND ORDER dtd 1-23-76 filed, that pltffs' application for a preliminary injunction and deft's cross motion for summary judgment ord dismissal must be denied. Copies mailed. (9)
5-76		Notice to take deposition of Menahem M. Beer and Benjamin Sprecher filed. (10)
29-76		Notice of motion to withdraw as atty ret 10-8-76 filed. (11)
29-76		Notice of motion to compel non party witness to answer the interrogatories filed. (12)
1-76		Before PLATT,J-Case called. Referred to Magistrate for motions. Recall 10-22-76. (13)
-5-76		Memo dtd 10-4-76 referring case to Magistrates filed. (14(
-5-76		Affidavit in opposition to motion to compel interroga filed.
8-76		Before PLATT,J.- Case called for motion to compel answers to interroga Motion argued and granted and conf set for 10-22-76 and motions set down for 10-22-76
-22-76		Before PLATT, J.--Case called. Order for substitution of attys signed. Pre trial order to be submitted on 11-26-76 on recall.
-26-76		By PLATT,J.- Order dtdl 10-22-76 consentinf to change= of atty for pltff filed. (15)
-23-76		Stenographer's transcripts dated 11-6-76 filed. (16)
14-77		Pltffs memorandum filed. (17)
14-77		Copy of deposition transcripts of Menahem M. Beer dtd 3-25-76. (18/19)
14-77		Deposition of Ravelle Brickman filed. (20)
7-77		Letter dtd 1-14-77 to J. Platt from pltffs' atty re pltffs' memo in support of final relief filed. (21)
19/77		DEPOSITION of RABBI BENJAMIN G. SPRECHER, witness, taken by pltff's, , filed. (22
9/77		Stipulation of agreed upon facts filed. (23)
21/77		Memo of law filed (Gerald Murray). (24)
21/77		Pltff's reply memo filed. (25)

Cont'd

75C 1749

CIVIL DOCKET CONTINUATION SHEET

3A

PLAINTIFF	DEFENDANT	DOCKET NO. 75C 1749
George Duckett	Eve Silbermann	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
3/15/77		By Platt, J Order dtd 3/15/77 filed re that the pltff have failed to establish that there is no apparent reason for the refusal of the deft to sell the property to the pltff other than the pltffs race nor for that matter that the pltff was willing to purchase the property on the terms specified by the owner etc and there is no basis for the pltffs claim and the same is dismissed and judgement must be entered for the deft with costs and deft should submit a judgement with costs on appropriate notice to the pltffs. (26)
3-28-77		NOTICE OF APPEAL FOR PLTFFS FILED. Copy to C of A. (27)
3/29/77		Copy of letter of James I. Meyerson to Clerk of Court of Appeals dtd 3/28/77. RE: Enclosed copies of forms C and D relative to case on appeal. Have filed copies of the same in Dist. Court and served counsel for Appellee filed. (28)
4-1-77		Above record certified & mailed to C of A. ---
4-1-77		Stenographer's transcript dtd 11-6-76 filed. (30)
4/7/77		Acknowledgment received from the Cof A for receipt of record on appeal. (31)

DC-111A (Rev. 1/75)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

GEORGE DUCKETT and DELORES DUCKETT,

Plaintiffs,

-against-

EVE SILBERMAN,

Defendant.

- -x

75 C 1749

MEMORANDUM AND ORDER

January 23, 1976

PLATT, D.J.

By order to show cause with an affidavit and exhibits attached, plaintiffs move pursuant to FRCP 65 for a preliminary injunction restraining the defendant "from maintaining a policy of discrimination against blacks seeking to purchase housing and from maintaining or continuing a custom, policy or practice of discrimination against plaintiffs on the ground of race or color and * * * showing, renting, negotiating, taking any steps in pursuance to the sale of said [sic] premises or otherwise disposing of said premises until defendant * * * offered such premises to plaintiffs and afforded plaintiffs a reasonable time in which to accept or reject said offer."

The premises in question, although not specified in the order to show cause, are stated in the complaint to be located at 141-01 77th Avenue, Kew Garden Hills, New York.

Defendant has cross moved, pursuant to FRCP 56, for summary judgment and/or, pursuant to FRCP 12(b)(6), for dismissal of plaintiffs' complaint on the grounds that plaintiffs fail to state a claim upon which relief may be granted and that the defendant is entitled to a judgment as a matter of law. Since defendant also filed an affidavit in connection with these motions, her cross motion will be treated as one for summary judgment.

A hearing was held on plaintiffs' motion for a preliminary injunction at which the plaintiffs called three witnesses, viz: Peter W. Smetana, who is the Real Estate Broker, the plaintiff George Duckett, and his attorney, Thomas Hoffman. The defendant rested without calling any witnesses.

In their complaint plaintiffs claim that jurisdiction is founded on 28 U.S.C. §§ 1331, 1343(3) and (4), and 3612, and 28 U.S.C. § 2201, and allege that the action is brought pursuant to the Thirteenth Amendment of the United States Constitution, and under 42 U.S.C. §§ 1981, 1982 and 3601, et seq.

Plaintiffs allege further that they are Negro citizens of the United States who sought to purchase a one-family house located at 141-01 77th Avenue, Kew Garden Hills, New York, owned by the defendant who is concededly a member of the Caucasian race. More specifically, they allege that on or about June 28, 1975, they visited the office of Teitlebaum Realty Co. in Flushing, New York, where they conferred with the witness Smetana who advised them of the availability of defendant's house and of the original asking price of $60,000.

According to the complaint, over a period of several weeks plaintiffs and Mr. Smetana negotiated a purchase price and one was "agreed upon in the amount of $45,000." An attorney for the plaintiffs then communicated with defendant's attorney who "did not return various telephone calls", did not "draft a contract and forward it to plaintiffs' attorney for consultation with his clients" and "refused to compromise on reasonable requests made by plaintiffs' attorney regarding terms to be included in a contract."

The plaintiff then alleges "That finally on October 3, 1975, plaintiffs' attorney forwarded a letter to defendant's attorney advising him that plaintiffs would not press for a clause which plaintiffs wanted included, and that if there should be a higher bona fide offer, plaintiffs would meet such an offer".

Thereafter the complaint alleges that plaintiffs' attorney forwarded another letter to defendant's attorney on October 7, 1975, and that on October 14, 1975, defendant's attorney advised plaintiffs' attorney that defendant had entered into a contract with other purchasers to sell the premises.

By reason of the foregoing plaintiff alleges that defendant's refusal to sell to plaintiff was because of plaintiffs' race or color and was discriminatory, and plaintiffs seek damages in the amount of $500 plus punitive or exemplary damages in the amount of $5,000, as well as an injunction, as indicated above.

The testimony of the witnesses substantiated some of the foregoing allegations but was also different in some material respects.

Mr. Smetana confirmed that the original asking price for the property which he had given to the plaintiff around June 22, 1975, was $60,000. Thereafter he showed the plaintiffs the house and pointed out certain things that were wrong with it and at the same time advised them that the price had been reduced to $55,000. After such showing the plaintiffs made an offer of approximately $40,000 to $42,000. In the latter part of July, according to Mr. Smetana, he was having telephone conferences with the defendant's daughter, Mrs. Brickman, who claimed she was negotiating for her mother and advised her that he had received an offer at that time from the plaintiffs of $44,000.

On the question of Mrs. Brickman's authority, Mr. Smetana was not very clear or explicit. He did recall that the defendant came to see him originally in the winter of 1975 about her desire to sell her home and that in the spring either the defendant or Mrs. Brickman had given him a listing to sell the house at a price of $60,000. He did not recall ever having a conversation with the defendant about her daughter's authority to act in her behalf in negotiating a purchase price or otherwise and he had nothing in writing on the subject.

Mr. Smetana recalls that the question of the plaintiffs' race or religion was brought up in one of his telephone conversations in the latter part of July with Mrs. Brickman. Initially he was asked whether the plaintiffs were Jewish. After his negative reply he believes the question was asked whether they were Black, to which he apparently replied in the affirmative, and he gave a good report to Mrs. Brickman as to their background and character. It is significant to note that he said that at the time Mrs. Brickman was still asking for a $55,000 price and the plaintiffs had only offered $44,000.

On or about August 19, 1975, the plaintiffs raised their offer to $45,000 which was communicated to Mrs. Brickman and thereafter Mr. Smetana received a telephone call from Mrs. Brickman's brother in Wisconsin accepting such offer. At the time of such offer and acceptance, however, there apparently was no discussion regarding a leak in the bathroom which Mr. Smetana had previously discussed with the plaintiffs.

Following the agreement of August 19, 1975, Mr. Smetana talked to the attorneys for the plaintiffs and for the defendant and gave them the terms of the deal as $45,000 subject to a conventional mortgage with a 20% or 25% down payment.

Mr. Smetana recalled that some time thereafter he received a telephone call from defendant's attorney, Mr. Murray, advising him that the plaintiffs had raised a question with respect to the seller's obligation to fix the leak and also a question with respect to the seller's obligation to carry the risk of the condition of the house to the date of the title closing and not to the date of the contract closing.

Mr. Smetana is not very clear with respect to the dates on which certain events took place thereafter. Initially he thought that it was at the end of September when he had raised the possibility that the seller's insurance policy might cover a portion of the cost of the repair of the leak and that it was then his opinion that the balance of the repair could be effected for approximately $200-250 and that with respect to the condition of the house, he had volunteered to be an arbitrator between the parties on this question.

Then, while still on direct examination, Mr. Smetana testified that on September 19th plaintiffs' attorney had told him that the plaintiffs had withdrawn the question of the condition of the house at the time of the closing, and that he had conveyed this message to defendant's attorney on September 19th or 22d.

On cross-examination, however, when shown a copy of plaintiffs' attorney's letter to defendant's attorney, dated October 3, 1975, stating that at least one of such conditions was being withdrawn, he qualified his opinion that the

withdrawal of such conditions was made on September 19th and conceded that it was possible that they might not have been withdrawn until October 3d.

Furthermore, Mr. Smetana testified that he spoke to defendant's attorney in the week of September 22d and asked if the deal could be saved and that "around September 29th" he was under the impression it could not be and he was trying to sell that property to other people although he had never been told by defendant's attorney that there was or would be no deal with the plaintiffs.

He recalls that on October 3, 1975, defendant's attorney advised him that he had another buyer on more favorable terms who was willing to pay more money and that no broker's commission would be involved. In addition, he testified that "to the best of his knowledge" such new offer was the reason for the collapse of the negotiations with the plaintiffs.

The plaintiff, George Duckett, was called and confirmed that the question of his race was first mentioned to him by Mr. Smetana on or about July 25th at which time his offer was approximately $42,000 and Mrs. Brickman's asking price was approximately $49,000.

The plaintiff, George Duckett, advised that on July 26th he offered $44,000 and was told that the new asking price was $48,000. He then said that he advised Mr. Smetana on or

about August 4th that he would pay $45,000 and that on or about August 20th Mr. Smetana advised him that his offer had been accepted.

Thereafter, when plaintiffs' attorney Mr. Hoffman asked him what conditions should be inserted in the contract he told Mr. Hoffman that the seller, through Mr. Smetana, had agreed to fix the bathroom leak and that there would be a guarantee on the appliances to the date of the title closing.

The plaintiff, George Duckett, advised that he later was told by his attorney that the seller would not accept such conditions and there ensued a discussion with Mr. Smetana with respect to the possibility that the seller's insurance policy covered a portion of the repairs needed in the bathroom.

The plaintiff, George Duckett, said that on September 19, 1975 he advised his attorney that he was withdrawing the conditions and that he raised no new conditions after that date.

The plaintiffs' attorney Mr. Hoffman took the stand and testified that he had relayed the two conditions to the defendant's attorney on or about September 2, 1975 at which time defendant's attorney had said "we got no deal" to which Mr. Hoffman replied by requesting defendant's attorney to take the conditions up with his client.

Mr. Hoffman further testified that on September 19th he advised defendant's attorney, Mr. Murray, that his client was willing to withdraw both conditions and would purchase the property without the same.

On October 3, 1975, Mr. Hoffman said, he had a further telephone conference with Mr. Murray in which the latter indicated that there was a new purchaser for the property, to which Mr. Hoffman replied that the plaintiffs would meet any higher bona fide offer. Mr. Hoffman conceded, however, that he did not have a power of attorney from his clients authorizing him to commit them to any higher price than the $45,000 offer indicated above. The same situation pertained with respect to a further telephone conference on October 7th and on October 9th he was advised by Mr. Murray that a new purchaser had contracted to purchase the house.

Discussion

Based on the foregoing, plaintiffs claim that they have sustained their burden of proof of showing "either a combination of probable success and the possibility of irreparable injury" or that they have "raised serious questions going to the merits and that the balance of hardships tipped sharply in their favor". Stark v. New York Stock Exchange,

466 F.2d 743 (2d Cir. 1972); Clever Idea Co., Inc. v. Consumer Product Safety Commission, 385 F.Supp. 688, 692 (E.D.N.Y. 1974); Moore v. Kibbee, 381 F.Supp. 834, 837 (E.D.N.Y. 1974); GSE Dynamics, Inc. v. John Doe, et al., 381 F.Supp. 1088, 1094 (E.D.N.Y. 1974).

On the question of "probable success", even assuming, arguendo, that an inference of discrimination may be drawn from a failure (as compared to a refusal) to do business (see Bush v. Kaim, 297 F.Supp. 151, 162 (N.D. Ohio 1969)), plaintiffs' proof raises and leaves unanswered several questions.

In the first place, there is no proof that the defendant knew or should have known of the religious and racial questions allegedly raised by the defendant's daughter, Mrs. Brickman, in her telephone conference with the real estate broker, Mr. Smetana.

Secondly, there is only fragmentary evidence at best that Mrs. Brickman was authorized to negotiate the price and conditions of sale by the defendant.

Thirdly, the proof shows, and the plaintiffs admit, that even after the religious and racial questions were raised by the defendant's daughter, the defendant reduced her asking price substantially and accepted the offer made by the plaintiffs, thus raising substantial questions as to whether plaintiffs' race had anything whatsoever to do with defendant's thinking in this matter. Indeed plaintiffs could offer no explanation as to why a seller intending to discrimate would

reduce an asking price from $60,000 to $45,000 to meet an offer by a buyer.

Fourthly, following the alleged agreement between the parties, it ws the plaintiffs who raised the conditions of the sale which prompted the defendant's attorney to state that "we got no deal" and which led the real estate broker to believe that the deal had collapsed and prompted him to commence showing the property to other persons.

And fifthly, and of considerable significance, is the fact that plaintiffs alleged in their complaint that they withdrew their conditions "finally" on October 3, 1975, clearly implying that they had not been withdrawn prior to that date. This is significant because on that date also the plaintiffs first learned that a new purchaser was negotiating with the defendant for the sale of the property.

While with real property there is always the possibility of "irreparable injury", the same would not appear to be necessarily true in this case. Plaintiffs took a substantial period of time in negotiation for the property and raised their offering price by only $5,000 in their successful attempt to compel the defendant seller to lower her asking price from $60,000 to $45,000. Moreover, it was plaintiffs who imposed the new and additional conditions after an agreement had been reached and there was no proof whatsoever that plaintiffs would suffer any hardship or irreparable injury if they were unable to obtain this particular

piece of property.

Under the circumstances, it is clear that the plaintiffs have not met their burden of meeting either of the above specified tests and hence there would appear to be no basis for the issuance of a preliminary injunction.

The defendant has cross-moved for summary judgment or dismissal. The gist of her contentions is that plaintiffs' suit is brought under the Fair Housing provisions of the Civil Rights Act of 1968 (42 U.S.C. § 3601, et seq., and specifically § 3604), but that 42 U.S.C. § 3603 exempts defendant from the coverage of the Act. Section 3603 provides that the Act shall not apply to:

> "(1) any single-family house sold or rented by an owner: . . . , if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman . . ."

Defendant claims that although she dealt with plaintiffs through a broker, she was not assisted by a broker, agent or salesman in locating and bargaining with the individual with whom she now wishes to deal.

The exemption of § 3603 is available only when a house is sold or rented without the use in any manner of a broker. It may well be a question of first impression whether the exemption operates when an unsuccessful sales effort made through a broker is followed by a successful effort made without a broker. But it will not be necessary (at least until a question of the proper remedy arises) for the

Court to pass on this question, since plaintiffs' action can be maintained under 42 U.S.C. § 1982 regardless of the exemption in § 3603. This is so because § 1982 "bars all racial discrimination, private as well as public, in the sale or rental of property," Jones v. Alfred Mayer Co., 392 U.S. 409, 413 (1968). No exemption excludes sales made without a broker from this Section's coverage. Plaintiff has alleged facts which, if proven at trial, would justify relief under this Section.

It follows that plaintiffs' application for a preliminary injunction and defendant's cross-motion for summary judgment or dismissal must be denied. Since plaintiffs claimed they had additional proof to offer on the merits of their application for a preliminary injunction which was not granted and since the hearing was held only on the injunction issue, a trial must be held unless of course discovery shows that no such additional proof exists in which case a further application for summary judgment may be made.

SO ORDERED.

U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

GEORGE DUCKETT and DELORES DUCKETT,

Plaintiffs,

-against-

EVE SILBERMAN,

Defendant.

- -x

75 C 1749

SUPPLEMENTAL MEMORANDUM AND ORDER

March 15, 1977

PLATT, D.J.

Plaintiffs sue to enjoin defendant "from maintaining a policy of discrimination against blacks seeking to purchase housing and from maintaining or continuing a custom, policy or practice of discrimination against plaintiffs on the ground of race or color" and for actual damages in the amount of $500, punitive damages in the amount of $1,000, damages for mental anguish, humiliation and embarrassment in the amount of $5,000, and costs and reasonable attorneys fees.

By Memorandum and Order dated January 23, 1976, after a hearing on which testimony was taken from the plaintiff, the real estate broker and plaintiffs' attorney, this Court denied plaintiffs' motion for a preliminary injunction and held that since plaintiffs claimed they had additional proof to offer on the merits, defendant's cross motion for summary judgment for dismissal must also be denied without prejudice to its renewal in the event that no additional proof existed.

Subsequent to said Memorandum and Order plaintiffs took the deposition of defendant's daughter, Ravelle Brickman, the deposition of the purchaser of the premises in question, Menahem Mendel Beer, and the deposition of Rabbi Benjamin G. Sprecher.

The parties then submitted to the Court a transcript of the proceedings before the Court on plaintiffs' application for preliminary injunctive relief with attendant exhibits, transcripts of the aforesaid depositions and an agreed upon stipulation of facts with attachments, and requested the Court in effect to decide the case on the record thus presented.

The background and facts are set forth in this Court's Memorandum and Order dated January 23, 1976, and will not be repeated herein.

Suffice it to say at this juncture that the additional depositions submitted herein sustain defendant's position and plaintiffs have not answered to the Court's satisfaction the third, fourth and fifth questions raised by the Court in said Memorandum and Order at pages 10 and 11 thereof.

If defendant had wished or intended to discriminate against the plaintiffs as they claim herein, it would have been an easy matter for the defendant to maintain the asking price for her house at $60,000 or $50,000 and not to have reduced the same as she did to $45,000 to meet plaintiffs' offer in August of 1975. The fact that she so reduced her asking price long after she learned of plaintiffs' color

militates strongly against (if it does not completely destroy) plaintiffs' discrimination claim.

Secondly, as indicated in the Court's prior Memorandum and Order, after the defendant lowered her price on condition that the premises be sold "as is", it was the plaintiffs who raised conditions to the sale which would have imposed an obligation on the defendant to repair at some substantial cost a leak in the bathroom and a further obligation to carry at her risk the condition of the house to the date of the title closing and not to the date of the contract signing. In other words, to state it bluntly, plaintiffs reneged on the deal and made a counter-offer to the defendant which the defendant rejected.

Upon such rejection defendant was under no obligation to maintain the sales price of $45,000 and could legitimately seek out a buyer who would pay more. This apparently is just what she did and obtained a substantially higher bid, i.e., an offer of $46,000 with no brokerage commission involved - or an offer some $3,000 in excess of the amount offered by the plaintiffs. Thus, it is of little significance whether in fact plaintiffs' attorney and/or Mr. Smetana (the real estate broker) communicated the withdrawal of the aforesaid conditions by the plaintiff on or about September 19, 1975, for, as indicated, the defendant at that point was free to seek a higher price.

Moreover, the Court is still not satisfied that the September 19th date was the date for the "firm" withdrawal

of the conditions and that it was not belatedly advanced for the purposes of this lawsuit.

As pointed-out in the Court's aforesaid Memorandum and Order, plaintiffs allege in their verified complaint that they did not withdraw their conditions "finally" until October 3, 1975. Moreover, plaintiffs' attorney did not advise defendant's attorney of this withdrawal in writing until said October 3d date.

In addition, it is significant that on the latter date of October 3, 1975, the plaintiffs, through their attorney renewed their offer of $45,000 for the premises and stated that "we would like the right of first refusal on any bona fide offer". At no time thereafter did the defendant indicate that she would give the plaintiff any such "right of first refusal". Instead, defendant continued her negotiations with the newly found prospective purchasers for the premises who, as indicated above, were tendering an offer for the premises which would net the defendant some $3,000 more than the offer made by the plaintiffs.

Finally, it ill behooves plaintiffs to argue, as they have, that defendant gave the new purchasers a more favorable deal because she took back from them a purchase money mortgage when in fact the plaintiffs by this lawsuit foreclosed the purchasers from obtaining a mortgage from any bank after they had signed a contract with the defendant.

By no stretch of the imagination may such an accomodation to meet an obstacle imposed by the very action of the plaintiffs themselves be said to be "discriminatory."

Accordingly, the Court finds that the plaintiffs have failed to establish that "there is no apparent reason for the refusal of the defendant to (sell) the property to the plaintiff other than the plaintiffs' race" nor for that matter that "the plaintiff was willing to purchase the property on the terms specified by the owner" until after a new purchaser had agreed to pay more for the property. Bush v. Kaim, 297 F.Supp. 151, 162 (N.D. Ohio 1969); Fred v. Kokinokos, 347 F.Supp. 942 (E.D.N.Y. 1972).

Under all of the foregoing circumstances, there is no basis for the plaintiffs claim and the same must be, and hereby is, dismissed and judgment must be entered for the defendant with costs.

Defendant should submit a judgment with costs on appropriate notice to the plaintiffs.

SO ORDERED.

Thomas C. Platt

U.S.D.J.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 75 Civ 1749

MR. GEORGE DUCKETT and MRS. DELORES DUCKETT,

PLAINTIFFS

vs

EVE SILBERMAN,

DEFENDANT

STIPULATION OF AGREED UPON FACTS

1. Mr George Duckett and Mrs. Delores Duckett are Black American citizens.

2. Mrs. Eve Silberman is a white American citizen.

3. Mr. Menahem Mendel Beer is a white person.

4. Mrs. Ravelle Brickman is a white person.

5. Mr. Peter Smetana is a white person.

6. Mrs. Silberman's son is a white person.

7. Mrs. Ravelle Brickman is the daughter of Mrs. Eve Silberman.

8. Mrs. Eve Silberman did own the premises located and situated at 141-01 77th Avenue, Flushing, Queens, New York. At the time of the sale of the premises she owned no other house. Said realty is the premises around which the litigation herein focuses.

7. Mrs. Ravelle Brickman ~~acted and~~ negotiated for ~~Mrs. Eve Silberman in~~ the sale of the premises located and situated at 141-01 77th Avenue, Flushing, Queens, New York.

8. Mrs. Eve Silberman's son ~~acted and~~ negotiated for ~~Mrs. Eve Silberman~~ in the same of the premises located and situated at 141-01 77th Avenue, Flushing, Queens, New York.

9. Mr. Peter Smetana is a real estate broker employed by the Teitelbaum Realty Company, located and situated at 73-15 Main Street, Flushing, Queens, New York.

10. Attached hereto and made part hereof are the following documents:

a. Letter from Thomas Hoffman to Gerald Murray, dated October 3, 1975.

b. Letter from Thomas Hoffman to Gerald Murray, dated October 7, 1975.

c. Contract of Sale and annexed Rider between Silberman and Beer; Indenture and Mortgage Agreement relative to the sale of the house by abd between Eve Silberman and Menahem Mendel Beer.

The aforementioned facts are agreed upon by and between the parties herein; and the case herein is submitted upon the following: Exhibits # 1 and 2 admitted into evidence heretofore (in the proceeding on the hearing convened to consider the Plaintiffs' application for preliminary in-

junctive relief); the transcript of the proceedings before this Court relative to Plaintiffs' application for preliminary injunctive relief; the documents attached hereto and made part hereof; and the depositions of Ravelle Brickman, Menahem Mendel Beer, and Rabbi Benjamin Sprecher.

Respectfully submitted,

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ATTORNEY FOR PLAINTIFFS

BY: James I. Meyerson

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90-61 Sutphin Boulevard
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(212)739-6672

ATTORNEY FOR DEFENDANT

BY: Gerald Murray

Exhibit "A"

October 3, 1975

Gerald Murray, Esq.
90-61 Sutphin Boulevard
Jamaica, New York

Re: Silverman to Duckett

Dear Mr. Murray:

This letter is to confirm our telephone conversation of this date.

My client is willing to enter into an agreement for sale of the Silverman premises the amount of $45,000. We have agreed not to include in the contract the standard clause that the property be maintained in its present condition.

You have advised me that there is another purchaser for the said premises. We would like the right of first refusal on any bona fide offer.

As you know we have been discussing this matter for more than five weeks and therefore would appreciate our entering into this contr no later than next week.

Thank you for your cooperation in this matter.

Very truly yours,

Thomas Hoffman

Exhibit "B"

October 7, 1975

CERTIFIED

Gerald Murray, Esq.
90-61 Sutphin Boulevard
Jamaica, New York

Re: Silverman to Duckett

Dear Mr. Murray:

This is to confirm our telephone conversation of this date wherein you indicated that the sale by the Silvermans to Mr. Duckett is now conditioned upon whether or not the Silvermans can sell their house to a third party. As I indicated to you on Friday, we are ready, willing and able to enter into a contract according to your terms and, furthermore, would be willing to meet a higher bona fide offer.

However, in spite of the above, you told me that your clients still refuse to enter into this contract. You further did not give me any reason for your clients' position. I will be awaiting your call on Thursday.

Very truly yours,

Thomas Hoffman

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT MAY AFFECT YOUR LEGAL RIGHTS. THIS INSTRUMENT SHOULD BE USED BY LAWYERS OR PERSONS

27A

THIS AGREEMENT, made the eighth day of October, nineteen hundred and seventy-five
BETWEEN

EVE S. SILBERMAN, residing at 141-01 77th Avenue
Flushing, New York

hereinafter described as the seller, and MENAHEM MENDEL BEER and FRADA BEER
residing at 150-40 77th Avenue
Kew Gardens, New York as purchasers.

hereinafter described as the purchaser,

WITNESSETH, that the seller agrees to sell and convey, and the purchaser agrees to purchase, all that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 77th Avenue distant 305.09 feet westerly from the corner formed by the intersection of the northerly side of 77th Avenue with the westerly side of Vleigh Place, as said streets are laid down and shown on a certain map entitled, "Map of Property belonging to Queens Valley Development Corporation, situated in the 3rd Ward, Borough of Queens, City of New York," surveyed March 6th, 1939 by Leonard C. L. Smith Engineering Co., filed in the office of the Register of Queens County on March 31st, 1939 as Map No# 7117; running thence northerly at right angles to 77th Avenue, 112.93 feet; thence westerly on a line forming an interior angle of 93 degrees 28 minutes 10 seconds with the last mentioned course 26.05 feet; thence southerly at right angles to 77th Avenue and part of the distance through a party wall, 114.51 feet to the northerly side of 77th Avenue; thence easterly along the northerly side of 77th Avenue, 26 feet to the point or place of beginning.

Said premises being known as and by street number 141-01 77th Avenue, Kew Gardens, Long Island, New York.

TOGETHER with and subject to an easement and right of way recorded in Liber 4153 cp. serial# 1926 and Liber 4239 cp. 250.

TOGETHER with all the right, title and interest of the party of the first part, if any, of, in and to 77th Avenue lying in front of and adjoining said premises to the centre line thereof.

This sale includes all right, title and interest, if any, of the seller in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining said premises, to the center line thereof, and all right, title and interest of the seller in and to any award made or to be made in lieu thereof and in and to any unpaid award for damage to said premises by reason of change of grade of any street; and the seller will execute and deliver to the purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

28A

[illegible] OF THOUSAND and 00/100 ($45,000.00) Dollars, payable as follows:

[illegible] FOUR THOUSAND SEVEN HUNDRED and 00/100 ($4,700.00) Dollars

[illegible] to be held by [illegible], Esq. [illegible] Dollars

on the signing of this contract, by check subject to collection, the receipt of which is hereby acknowledged;

FOURTY THOUSAND FOUR HUNDRED and 00/100 ($40,400.00) Dollars

in cash or good certified check on the delivery of the deed as hereinafter provided;

Dollars

by taking title subject to a mortgage now a lien on said premises in that amount, bearing interest at the rate of per cent per annum, the principal being due and payable

Dollars

by the purchaser or assigns executing, acknowledging and delivering to the seller a bond or, at the option of the seller, a note secured by a purchase money mortgage on the above premises, in that amount, payable

per annum payable together with interest at the rate of per cent

Any bond or note and mortgage to be given hereunder shall be drawn on the standard forms of New York Board of Title Underwriters for mortgages of like lien; and shall be drawn by the attorney for the seller at the expense of the purchaser who shall also pay the mortgage recording tax and recording fees and pay for and affix to such instruments any and all revenue stamps that may be necessary.

If such purchase money mortgage is to be a subordinate mortgage on the premises it shall provide that it shall be subject and subordinate to the lien of the existing mortgage of $, any extensions thereof and to any mortgage or consolidated mortgage which may be placed on the premises in lieu thereof, and to any extensions thereof provided (a) that the interest rate thereof shall not be greater than per cent per annum and (b) that, if the principal amount thereof shall exceed the amount of principal owing and unpaid on said existing mortgage at the time of placing such new mortgage or consolidated mortgage, the excess be paid to the holder of such purchase money mortgage in reduction of the principal thereof. Such purchase money mortgage shall also provide that such payment to the holder thereof shall not alter or affect the regular installments, if any, of principal payable thereunder and shall further provide that the holder thereof will, on demand and without charge therefor, execute, acknowledge and deliver any agreement or agreements further to effectuate such subordination.

If there be a mortgage on the premises the seller agrees to deliver to the purchaser at the time of delivery of the deed a proper certificate executed and acknowledged by the holder of such mortgage and in form for recording, certifying as to the amount of the unpaid principal and interest thereon, date of maturity thereof and rate of interest thereon, and the seller shall pay the fees for recording such certificate.

Said premises are sold and are to be conveyed subject to:

1. Zoning regulations and ordinances of the city, town or village in which the premises lie which are not violated by existing structures.

2. Consents by the seller or any former owner of premises for the erection of any structure or structures on, under or above any street or streets on which said premises may abut.

3. Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway.

All notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the Departments of Housing and Buildings, Fire, Labor, Health, or other State or Municipal Department having jurisdiction, against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same, and this provision of this contract shall survive delivery of the deed hereunder. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

If, at the time of the delivery of the deed, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller, upon the delivery of the deed.

This clause is usually omitted if the property is not in the City of New York.

The following are to be apportioned: ~~(1) Rents as and when collected. (2) Interest on mortgage~~ (3) Premiums on existing transferable insurance policies or renewals of those expiring prior to the closing. (4) Taxes and sewer rents, if any, on the basis of the fiscal year for which assessed. (5) Water charges on the basis of the calendar year. (6) Fuel, if any.

[illegible] of the title shall occur before the tax rate is fixed, the apportionment [illegible] shall be upon the basis of [illegible] the next preceding year applied to the latest assessed valuation.

[illegible] water meter on the premises, the seller shall furnish a reading to a date not more than thirty days prior to the [illegible] or closing title, and the unfixed meter charge and the unfixed sewer rent, if any, based thereon for the interven[illegible] be apportioned on the basis of such last reading.

[illegible] ed shall be the usual **Bargain and sale with covenants against grantor's ac[illegible]**

[illegible] in proper statutory short form for record and shall be duly executed, acknowledged, and have revenue stamps in [illegible] per amount affixed thereto by the seller, at the seller's expense, so as to convey to the purchaser the fee simple of the as[illegible] premises, free of all encumbrances, except as herein stated, and shall also contain the covenant required by subdivision 5 [illegible] Section 13 of the Lien Law.

At the closing of the title the seller shall deliver to the purchaser a certified check to the order of the Director of Finance for [illegible] amount of the Real Property Transfer Tax imposed by Title I of Chapter 46 of the Administrative Code of the City of New York and will also deliver to the purchaser the return required by the said statute and the regulations issued pursuant to [illegible] authority thereof, duly signed and sworn to by the seller; the purchaser agrees to sign and swear to the said return and, [illegible] cause the said check and the said return to be delivered to the City Register promptly after the closing of the title.

The seller shall give, and the purchaser shall accept a title such as **[illegible] will accept**, a Member of the New York Board of Title Underwriters, will approve and insure.

All sums paid on account of this contract, and the reasonable expenses of the examination of the title to said premises and of the survey, if any, made in connection therewith are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

All fixtures and articles of personal property attached or appurtenant to or used in connection with said premises are represented to be owned by the seller, free from all liens and encumbrances except as herein stated, and are included in this sale without limiting the generality of the foregoing, such fixtures and articles of personal property include plumbing, heating, lighting and cooking fixtures, air conditioning fixtures and units, range, refrigerator, ~~radio and television antennas~~, bathroom and kitchen cabinets, mantels, door mirrors, venetian blinds, ~~shades~~, screens, ~~awnings~~, storm windows, ~~window boxes~~, storm doors, mail boxes, ~~[illegible] fixtures~~, ~~[illegible]~~, shrubbery ~~[illegible]~~.

The amount of any unpaid taxes, assessments, water charges and sewer rents which the seller is obligated to pay and discharge with the interest and penalties thereon to a date not less than two business days after the date of closing title, may at the option of the seller be allowed to the purchaser out of the balance of the purchase price, provided official bills therefor with interest and penalties thereon figured to said date are furnished by the seller at the closing. If at the date of closing title there may be any other liens or encumbrances which the seller is obligated to pay and discharge, the seller may use any portion of the balance of the purchase price to satisfy the same, provided the seller shall have delivered to the purchaser at the closing of title instruments in recordable form and sufficient to satisfy such liens and encumbrances of record, together with the cost of recording or filing said instruments. The purchaser, if request is made within a reasonable time prior to the date of closing of title, agrees to provide at the closing separate certified checks as requested, aggregating the amount of the balance of the purchase price, to facilitate the satisfaction of any such liens or encumbrances. The existence of any such taxes or other liens and encumbrances shall not be deemed objections to title if the seller shall comply with the foregoing requirements.

If a search of the title discloses judgments, bankruptcies or other returns against other persons having names the same as or similar to that of the seller, the seller will on request deliver to the purchaser an affidavit showing that such judgments, bankruptcies or other returns are not against the seller.

In the event that the seller is unable to convey title in accordance with the terms of this contract, the sole liability of the seller will be to refund to the purchaser the amount paid on account of the purchase price and to pay the net cost of examining the title, which cost is not to exceed the charges fixed by the New York Board of Title Underwriters, and the net cost of any survey made in connection therewith incurred by the purchaser, and upon such refund and payment being made this contract shall be considered canceled.

The deed shall be delivered upon the receipt of said purchase price at the office of **Gerald Murray at [illegible] Boulevard, Queens N.Y., New York or at the office of lending institution** at **3** o'clock on **2/9** 19**[illegible]**

no broker

The parties agree that
brought about this sale ~~and the seller agrees to pay the commission at the rates established or adopted by the Board of Real Estate Brokers in the locality where the property is situated.~~

It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this contract, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this contract, made by the other. The purchaser has inspected the buildings standing on said premises and is thoroughly acquainted with their condition.

This agreement may not be changed or terminated orally. The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

If two or more persons constitute either the seller or the purchaser, the word "seller" or the word "purchaser" shall be construed as if it read "sellers" or "purchasers" whenever the sense of this agreement so requires.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto.

In presence of:

Eva S. Silberman

[illegible]

[illegible] Berl

NOTE: [illegible] LOSSES. This form of contract contains no express provision as to risk of loss by fire or other casualty before delivery of the deed. Unless express provision is made, the provisions of Section 5-1311 of the General Obligations Law will apply. This section also places risk of loss upon purchaser if title or possession is transferred prior to closing.

RIDER ANNEXED TO AND
FORMING PART OF CONTRACT OF SALE,
DATED Oct 28 1975, MADE BY AND
BETWEEN EVE S. SILBERMAN AS SELLER,
AND Beers
AS PURCHASER

Said premises sold and shall be conveyed and taken subject to the following additional provisions:

The parties agree that these premises are sold "as is"; that the purchaser has inspected the premises and knows the condition thereof and that no representation or warranties with respect to the same have been made by or on behalf of the seller. In the event the seller is unable to convey good and marketable title free from encumbrances, restrictions, encroachments or other defects of title, except those in this contract specified, the purchaser shall have the option of taking such title to the premises as the seller can convey, and take such title without any reduction or abatement in selling price, and unless the purchaser take such title as the seller can convey, upon the return of the money paid hereunder plus the actual net cost of title examination where no title policy is issued, this contract shall be and become of no further force and effect and the parties hereto released of any and all further liability as against each other.

If at the time of closing of title, the premises shall have been affected by any lien or mortgage, which pursuant to the terms of this agreement are required to be discharged or satisfied by the seller, in such event, the seller may use the proceeds of this sale to satisfy the same of record prior to the closing of title, provided proper instruments of discharge or satisfaction may be procured and proper allowance made to the purchaser for the recording and title company charges thereon.

The purchaser agrees to deliver to the attorney for the seller herein, at least 10 days prior to the closing, a list of any objections or violations which may appear on any proper examination of title, and if any objections or violations appear on said title examination, and cannot be cleared by the seller by the time set for closing of title, then the seller at his optiin, shall be entitled to a reasonable adjournment of the closing for the purpose of removing such objections and violations.

The parties waive the provisions of Section 5-1311 of the General Obligation Law. If prior to the date for closing title (a) all or a material part of the main building on the premises is destroyed by fire or the elements or by any cause beyond either party's control, or (b) all or a material part of the premises is taken by eminent domain, either paty may, by written notice to the other, elect to cancel this agreement prior to the date for closing title. In the event that either party shall so elect, both parties shall be relieved and released of and from any further liability hereunder, and the seller shall forthwith repay to the purchaser the amount paid upon the execution and delivery of this agreement. Unless this agreement is so cancelled, it shall remain in full force and effect, and the seller, upon closing of title, and the receipt of the purchase price, shall pay to the purchaser and sums of money collected by the seller

under policies of insurance or renewals thereof, insuring against the loss in question, after deducting any amounts which the seller shall have agreed or been obligated to pay for repairs or restoration of the damage. In addition, the seller shall assign, transfer and set over to the purchaser all the seller's right, title and interest in and to said policies and any further sums payable thereunder. If any part of the premises shall have been taken by eminent domain the seller shall assign, transfer and set over to the purchaser all the seller's right, title and interest in and to any awards that may be made for such taking. If prior to the date for closing of title (a) an immaterial part of the main building on the premises is destroyed by fire or the elements or by any cause beyond either party's control, or (b) an immaterial part of the premises is taken by eminent domain, neither party shall have the right to cancel this agreement and the purchaser shall be entitled to an equitable abatement of the purchase price, to the extent of the destruction or taking.

All appliances and articles or personal property included in this sale are sold "as is" and without any representation or warranty by the sellers as to the physical condition thereof, except that seller agrees to deliver said appliances in operating condition.

~~Purchaser further agrees that he will cooperate in any way necessary and execute any papers necessary should the sellers wish to apply to a bank to obtain a mortgage on the premises at a later date. It is further understood that should such a mortgage be obtained, it will be at the same interest herein, and will be at the sole expense of the sellers.~~

~~It is further understood that should title insurance be required, that the purchaser will pay the premium therefore on behalf of the sellers.~~ The mortgage tax of course will be paid by the purchaser.

The premises will be delivered vacant on closing. Seller represents that premises is a legal one-family dwelling as presently constructed.

The contract is subject to A. the purchaser securing a first mortgage for $20,000.00 at prevailing interest rate from lending institution for a 20 year period, which he agrees to make earnest effort to secure; in the event purchaser does not secure said mortgage within six weeks from the date hereof then the purchaser shall have the right to cancel this contract and to a return of down payment on condition however, that he notify GERALD MURRAY, attorney for the seller in writing within six weeks plus five days from the date hereof of his inability to secure said mortgage; in the event said notification is not so made, this contract shall remain in full force and effect anything in this paragraph to the contrary notwithstanding.

B. Any state of facts an accurate survey may show, provided the same does not render title unmarketable.

C. Covenants, restrictions, easements and utility agreements, if any, of record, provided the same do not prohibit the present structures on the premises and the continued use thereof for the purpose for which the same are presently used.

The purchaser states that he and his immediate family first became aware that said premises were for sale only through a neighbor, namely BENJAMIN SPRECHER and not through any real estate organization or person of the agents thereof, and that he was never shown the house, or never became aware of the house being for sale by any real estate organization or the agents thereof.

Alec S. Silberman

Marilyn Wolf Beer

Frank Beer

THE OBSERVANCE OF THE FOLLOWING SUGGESTIONS WILL SAVE YOU

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

K.S. 50.00

33A

THIS INDENTURE, made the 5th day of ~~March~~ APRIL, nineteen hundred and seventy six

BETWEEN EVA S. SILBERMAN, residing at 141-01 77th Avenue, Flushing, New York

* SO IN ORIGINAL

REL 931 PAGE 306

party of the first part, and MENAHEM MENDEL BEER AND FRAIDA BEER his wife residing at 150-40 77th Avenue Kew Gardens, New York as purchaser.

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 77th Avenue distant 305.09 feet westerly from the corner formed by the intersection of the northerly side of 77th Avenue with the westerly side of Vleigh Place, as said streets are laid down and shown on a certain map entitled, "Map of Property belonging to Queens Valley Development Corporation, situated in the 3rd Ward, Borough of Queens, City of New York" surveyed March 6th, 1939 by Leonard C. L. Smith Engineering Co., filed in the office of the Register of Queens County on March 31st, 1939 as Map No# 7117, running thence northerly at right angles to 77th Avenue, 112.93 feet; thence westerly on a line forming an interior angle of 93 degrees 28 minutes 10 seconds with the last mentioned course 26.05 feet; thence southerly at right angles to 77th Avenue and part of the distance through a party wall, 114.51 feet to the northerly side of 77th Avenue; thence easterly along the northerly side of 77th Avenue, 26 feet to the point or place of BEGINNING.

6606/47

* SO IN ORIGINAL

Said premises being known as and by street number 141-01 77th Avenue, Kew Gardens, Long Island, New York.

TOGETHER with the benefits and subject to an easement and right of way recorded in Liber 4153 cp. ~~serial # 1926~~ 325 and Liber 4239 cp. 250.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever. TOGETHER with all the right, title and interest of the party of the first part, if any, of in and to 77th Avenue lying in front of and adjoining said premises to the center line thereof.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

AND the party of the first part covenants as follows: that said party of the first part is seized of the said premises in fee simple, and has good right to convey the same; that the party of the second part shall quietly enjoy the said premises; that the said premises are free from incumbrances, except as aforesaid; that the party of the first part will execute or procure any further necessary assurance of the title to said premises; and that said party of the first part will forever warrant the title to said premises.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

* SO IN ORIGINAL

Eva S. Silberman

EVA S. SILBERMAN

~~MENAHEM MENDEL BEER~~

STATE OF NEW YORK, COUNTY OF QUEENS ss:

On the 8 day of APRIL 1976, before me personally came EDA S SILVERMAN

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same.

Jacob H. Green

JACOB H. GREEN
Notary Public, State of New York
No. 41-6639923
Qualified in Queens County
Commission Expires March 30, 1978

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

REC'D 90 Liber 397

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came

to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the of , the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed h name thereto by like order.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No.

that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed h name as witness thereto.

REAL ESTATE TRANSFER TAX
Dept of Taxation & Finance APR 12 '76
STATE OF NEW YORK
$50.60
PB 10912

Title No. 134/513

B 8 10772 Q

TO

Warranty Deed
With Full Covenants.

The land affected by the within instrument lies in Section in Block 660 on the Land Map of the County of Queens

Recorded at Request of

Lot 147

NOT VERIFIED

Please Record and Return to
CITY TITLE INSURANCE COMPANY
153 Remsen St., Brooklyn, N Y 11201

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

AB APR 12 PM 2-23

APR-12-76 37904 A — 1500
APR-12-76 37905 — SSM 5000

OFFICE OF CITY REGISTER
Queens County
Recorded
Witness my hand
and seal of office

CITY REGISTER

A-12

REC'D

Standard N Y B T U Form 8011 - 247-2M - Mortgage (Individual or Corporation)

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS MORTGAGE, made the 8th day of APRIL, nineteen hundred and SEVENTY-SIX

BETWEEN

* SO IN ORIGINAL

MENAHEM MENDEL BEER AND FRAIDA BEER his wife
residing at 141-01 77th Avenue
Flushing, New York

* SO IN ORIGINAL

, the mortgagor,

and

EVE S. SILBERMAN
residing at 104-60 Queens Boulevard
Forest Hills, New York

REEL 931 PAGE 393

, the mortgagee,

WITNESSETH, that to secure the payment of an indebtedness in the sum of TWENTY TWO THOUSAND AND 00/00 ($22,000.00) dollars, lawful money of the United States, to be paid monthly

6606/147

with interest thereon to be computed from the date hereof, at the rate of 8½ per centum per annum, and to be paid on the 1st day of MAY 1976, next ensuing and month thereafter,

according to a certain bond, note or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Queens, County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 77th Avenue distant 305.09 feet westerly from the corner formed by the intersection of the northerly side of 77th Avenue with the westerly side of Vleigh Place, as said streets are laid down and shown on a certain map entitled, "Map of Property belonging to Queens Valley Development Corporation, situated in the 3rd Ward, Borough of Queens, City of New York," surveyed March 6th, 1939 by Leonard C. L. Smith Engineering Co., filed in the office of the Register of Queens County on March 31st, 1939 as Map No# 7117; running thence northerly at right angles to 77th Avenue, 112.93 feet; thence westerly on a line forming an interior angle of 93 degrees 28 minutes 10 seconds with the last mentioned course 26.05 feet; thence southerly at right angles to 77th Avenue and part of the distance through a party wall, 114.51 feet to the northerly side of 77th Avenue; thence easterly along the northerly side of 77th Avenue, 26 feet to the point or place of BEGINNING.

* SO IN ORIGINAL

Said premises being known as and by street number 141-01 77th Avenue, Kew Gardens, Long Island, New York.

TOGETHER with and subject to an easement and right of way recorded in Liber 4153 cp. ~~Serial# 1926~~ and Liber 4239 cp. 250.

TOGETHER with all the right, title and interest of the party of the first part, if any, of, in and to 77th Avenue lying in front of and adjoining said premises to the centre line thereof.

This is a purchase money mortgage.

TOGETHER with all right, title and interest of the mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises;

TOGETHER with all fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other equipment and machinery, appliances, fittings, and fixtures of every kind in or used in the operation of the buildings standing on said premises, together with any and all replacements thereof and additions thereto;

TOGETHER with all awards heretofore and hereafter made to the mortgagor for taking by eminent domain the whole or any part of said premises or any easement therein, including any awards for changes of grade of streets, which said awards are hereby assigned to the mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the mortgage debt, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

AND the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.

2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.

3. That no building on the premises shall be altered, removed or demolished without the consent of the mortgagee.

4. That the whole of said principal sum and interest shall become due at the option of the mortgagee: after default in the payment of any instalment of principal or of interest for fifteen days; or after default in the payment of any tax, water rate, sewer rent or assessment for thirty days after notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided. An assessment which has been made payable in instalments at the application of the mortgagor or lessee of the premises shall nevertheless, for the purpose of this paragraph, be deemed due and payable in its entirety on the day the first instalment becomes due or payable or a lien.

5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

6. That the mortgagor will pay all taxes, assessments, sewer rents or water rates, and in default thereof, the mortgagee may pay the same.

7. That the mortgagor within five days upon request in person or within ten days upon request by mail will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the mortgagor warrants the title to the premises.

10. That the fire insurance policies required by paragraph No. 2 above shall contain the usual extended coverage endorsement; that in addition thereto the mortgagor, within thirty days after notice and demand, will keep the premises insured against war risk and any other hazard that may reasonably be required by the mortgagee. All of the provisions of paragraphs No. 2 and No. 4 above relating to fire insurance and the provisions of Section 254 of the Real Property Law construing the same shall apply to the additional insurance required by this paragraph.

11. That in case of a foreclosure sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.

12. That if any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured thereby), to which action or proceeding the mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by the mortgagor, together with interest thereon at the rate of six per cent per annum and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

13. That the mortgagor hereby assigns to the mortgagee the rents, issues and profits of the premises as further security for the payment of said indebtedness, and the mortgagor grants to the mortgagee the right to enter upon and to take possession of the premises for the purpose of collecting the same and to let the premises or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of said indebtedness. This assignment and grant shall continue in effect until this mortgage is paid. The mortgagee hereby waives the right to enter upon and to take possession of said premises for the purpose of collecting said rents, issues and profits, and the mortgagor shall be entitled to collect and receive said rents, issues and profits until default under any of the covenants, conditions or agreements contained in this mortgage, and agrees to use such rents, issues and profits in payment of principal and interest becoming due on this mortgage and in payment of taxes, assessments, sewer rents, water rates and carrying charges becoming due against said premises, but such right of the mortgagor may be revoked by the mortgagee upon any default, on five days' written notice. The mortgagor will not, without the written consent of the mortgagee, receive or collect rent from any tenant of said premises or any part thereof for a period of more than one month in advance, and in the event of any default under this mortgage will pay monthly in advance to the mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of said premises or of such part thereof as may be in the possession of the mortgagor, and upon default in any such payment will vacate and surrender the possession of said premises to the mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

14. That the whole of said principal sum and the interest shall become due at the option of the mortgagee: (a) after failure to exhibit to the mortgagee, within ten days after demand, receipts showing payment of all taxes, water rates, sewer rents and assessments; or (b) after the actual or threatened alteration, demolition or removal of any building on the premises without the written consent of the mortgagee; or (c) after the assignment of the rents of the premises or any part thereof without the written consent of the mortgagee; or (d) if the buildings on said premises are not maintained in reasonably good repair; or (e) after failure to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the premises within three months from the issuance thereof; or (f) if on application of the mortgagee two or more fire insurance companies lawfully doing business in the State of New York refuse to issue policies insuring the buildings on the premises; or (g) in the event of the removal, demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from chattel mortgages or other encumbrances thereon and free from any reservation of title thereto; or (h) after thirty days' notice to the mortgagor, in the event of the passage of any law deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes; or (i) if the mortgagor fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this mortgage; or (j) if the mortgagor fails to keep, observe and perform any of the covenants, conditions or agreements contained in any prior mortgage or fails to repay to the mortgagee the amount of any instalment of principal or interest which the mortgagee may have paid on such mortgage with interest thereon as provided in paragraph 16 of this mortgage.

15. That the mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

16. If the mortgagor fails to pay any instalment of principal or interest on any prior mortgage when the same becomes due, the mortgagee may pay the same, and the mortgagor on demand will repay the amount so paid with interest thereon at the legal rate and the same shall be added to the mortgage indebtedness and be secured by this mortgage.

17. That the execution of this mortgage has been duly authorized by the board of directors of the mortgagor.

Strike out clause 17 if inapplicable.

18. ~~This mortgage is subject and subordinate~~ The mortgagor shall maintain liability insurance in amounts of $100,000.

19. The mortgagor agrees to use diligent efforts to obtain a mortgage from a bank after the case pending in the Federal Court is terminated entitled George Duckett vs. Eve Silberman.

F.B.

F.B.

20. These premises are improved by a one family dwelling only

This mortgage may not be changed or terminated orally. The covenants contained in this mortgage shall run with the land and bind the mortgagor, the heirs, personal representatives, successors and assigns of the mortgagor and all subsequent owners, encumbrancers, tenants and subtenants of the premises, and shall enure to the benefit of the mortgagee, the personal representatives, successors and assigns of the mortgagee and all subsequent holders of this mortgage. The word "mortgagor" shall be construed as if it read "mortgagors" and the word "mortgagee" shall be construed as if it read "mortgagees" whenever the sense of this mortgage so requires.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor

IN PRESENCE OF:

Jerry E. Rubby

Frances Beer

REEL 6344 PAGE 463

20. That in addition to the regular minimum monthly payment of principal and interest as required to be paid under the bond secured by this mortgage, the mortgagor will also make monthly payments, as required by said bond for taxes, water rates, sewer rental tax charge and fire insurance with extended coverage, as these monthly payments will be estimated and required by the mortgagee. The Mortgagee may at any time waive any or all of the tax, water, sewer rental or insurance payments to it and require same to be paid by the Mortgagor.

21. The mortgagor further agrees to keep the buildings insured against loss by fire and other hazards, casualties and contingencies, including extended coverage, for the benefit of the mortgage, in such amounts and for such periods as the mortgagee may require, and the rights of the mortgagee on failure of the mortgagor to supply any such insurance shall be the same as provided in the Real Property Law in reference to fire insurance.

22. That if the mortgaged premises shall be abandoned by the mortgagor or any successors in title, the mortgagee shall be entitled to enter upon and take possession of the same to protect and conserve its security.

REEL 501 PAGE 401

23. That if any action or proceeding be commenced by any other person than the mortgagee, to which action or proceeding the mortgagee is made a party, or in which it becomes necessary to defent or uphold the lien of the mortgage, all sums paid by the mortgagee for the expenses of any such litigation to prosecute or defend the rights and lien created by this mortgage(including reasonable counsel fees) shall be paid by the mortgagor, together with interest thereon, at the rate of six percent (6%) per annum, and any such sum and interest shall be a lien on said premises, prior to any right, title or interest in or claim upon the premises attaching or accruing subsequent to the lien of the mortgage, and shall be added to the principal amount intended to be secured by this mortgage and the accompanying bond.

24. That if more than one party joins in the execution of this instrument, the covenants and agreements hereof shall be their joint and several obligations, and if any be of other than the masculine sex, the relative words herein shall read as if written in the plural and/or in such other gender, accordingly, as the case may be.

25. This agreement shall bind and apply to the parties hereto and their respective heirs, executors, administrators, successors and assigns.

26. That the mortgagee and any persons authorized by the Mortgagee shall have the right to enter and inspect the premises at all reasonable times.

27. In the event of a transfer of the premises described herein from the mortgagor or any subsequent owner to any other party, the mortgagee or its assigns shall have the option to declare the entire unpaid principal sum and accrued interest due and payable.

STATE OF NEW YORK, COUNTY OF Queens ss:

On the 6th day of APRIL 1976, before me personally came MENIHEM MENDEL BEER AND FRAIDA BEER to me known to be the individual 6 described in and who executed the foregoing instrument, and acknowledged that they executed the same.

Jacob H. Green

JACOB H. GREEN
Notary Public, State of New York
No. 41-6639975
Qualified in Queens County
Commission Expires March 30, 1978

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

REEL 501 PAGE 402

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No. ; that he is the of , the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed h name thereto by like order.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19, before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. ; that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed h name as witness thereto

Mortgage
(SUBORDINATE)

TITLE NO. 1341513

10773

TO

RECORDING TAX $ 20 —

D-15

SECTION
BLOCK 6606
LOT 147
COUNTY OR TOWN Queens

VERIFIED

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS
Distributed by
THE TITLE GUARANTEE COMPANY
CHARTERED 1886 IN NEW YORK

Please Record at Request of
CITY TITLE INSURANCE COMPANY
32 Broadway
153 Remsen Street
1051 Franklin Avenue
6 Grand Street
New York, N. Y. 10004
Brooklyn, N. Y. 11201
Garden City, N. Y. 11530
White Plains, N. Y. 10601

PLEASE RETURN BY MAIL TO
GERALD MURRAY, ESQ
90-61 Sutphin Blvd
Jamaica, NY

APR-12-76 37906 Tax 250.00
APR-12-76 37907 D-14 15.00

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

APR 12 PM 2 23

OFFICE OF CITY REGISTER
Queens County
RECORDED
Witness my hand
and official seal

Matthew J. Doherty
CITY REGISTER

APR 12 395

MATTHEW J. DOHERTY

IN THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 75 Civ 1749

MR. GEORGE DUCKETT and MRS. DELORES DUCKETT,

PLAINTIFFS

vs

EVE SILBERMAN,

DEFENDANT

STIPULATION OF AGREED UPON FACTS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

GEORGE DUCKETT and DELORES DUCKETT, :

Plaintiffs, :

-against- :

EVE SILBERMAN, :

Defendant. :

- x

200 West 57th Street,
New York, New York

October 20, 1976
1:00 o'clock p.m.

Continued deposition of MENAHEM MENDEL BEER taken on behalf of the defendant, pursuant to Notice dated March 25, 1976.

McG/RY
1/2

A P P E A R A N C E S:

THOMAS HOFFMAN, ESQ.
Attorney for Plaintiffs
200 West 57th Street
New York, New York 10019

LARRY E. RIBOWSKY, ESQ.
Attorney for Menahem Mendel Beer
94-03 101st Street.
Ozone Park, New York

ALSO PRESENT:

JAMES MEYERSON, ESQ.
1790 Broadway
New York, New York

* * *

M E N A H E M M E N D E L B E E R, having been previously duly sworn by a Notary Public, testified further as follows:

EXAMINATION BY MR. HOFFMAN:

Q When did you begin taking steps to sell your previous residence?

MR. RIBOWSKY: Objection. I think that question was answered, if you will refer back.

MR. HOFFMAN: Off the record.

(Discussion off the record.)

MR. RIBOWSKY: Well, objection, but I will

1 permit the witness to answer.

2 A Sometime after the contract for the new house

3 was signed.

4 Q Was there any understanding at the time of your

5 entering into the contract with your new house that if

6 you were unable to sell your previous residence, that

7 you wouldn't be obliged to go through with the purchase

8 of the new premises?

9 MR. RIBOWSKY: I object. Are you referring to a written understanding in the contract, written or otherwise?

10

11

12

13 MR. HOFFMAN: Written or otherwise.

14 Off the record.

15 (Discussion off the record.)

16 Q Let me repeat that. Was there any discussion

17 regarding what would happen with the new contract if you

18 were unable to sell your former residence?

19 A I don't precisely recall.

20 MR. RIBOWSKY: Off the record.

21 (Discussion off the record.)

22 MR. HOFFMAN: Will you produce the contract

23 for the sale of the former residence without

24 a motion to produce? Will you send me a copy

25 of that?

MR. RIBOWSKY: His former residence, yes, I will.

Q Did you contact any brokers in regard to the sale of your former residence?

A Yes.

Q Which brokers did you contact?

A Well, there are a number.

MR. RIBOWSKY: Just list them.

A One of them was Amazing Realty. One of them was Butterly, Green. I called Teitelbaum Realty. Nothing ever came of that and nothing ever came of the others.

Q Did you talk to Mr. Smetana of Teitelbaum Realty regarding the sale of your former residence?

A I believe I did, but that's the last I heard of it.

Q Do you recall him telling you that he would not represent you in the sale of your former residence?

A I don't remember what happened. All I know is nothing ever came of it.

Q Do you recall any part of your conversation with Mr. Smetana regarding the sale of your former residence?

A No.

Q Other than going to a broker, what other steps did you take to sell your former residence?

A I advertised in various papers.

Q Which papers did you advertise in?

A The New York Times, The Jewish Press and a Chinese newspaper whose name I don't recall.

MR. HOFFMAN: Off the record.

(Discussion off the record.)

Q What dates did you publish those advertisements?

A Various dates over a period of time after the contract was signed, for several months.

Q It was continuous for several months?

A On and off. It would be very difficult to recall exactly.

Q Was it any particular day of the week? Was it Sunday, Monday or Thursday which you advertised on?

A Generally around weekends, but I don't recall.

Q Do you recall the last time that advertisement was inserted in any of the newspapers?

A No.

Q Do you recall the period of time which these advertisements continued, weeks,months or days?

A I would say a period of approximately two to

three months.

Q Now, did you receive any communication from individuals pursuant to those advertisements?

MR. RIBOWSKY: Responses, you mean?

MR. HOFFMAN: Responses.

A Yes, sure.

Q What was the offering price in those advertisements?

MR. RIBOWSKY: This is the old house?

MR. HOFFMAN: The old house.

MR. RIBOWSKY: Objection. I don't see the relevancy of this at all. I will be glad to hear what you think the relevancy is.

MR. HOFFMAN: Off the record.

(Discussion off the record.)

MR. RIBOWSKY: I instruct the witness not to guess. If he recalls, answer the question.

A I recall the sale price of the old house which was $39,500.

Q Do you recall what amount you offered to sell that house for in the advertisements?

MR. RIBOWSKY: Objection. You haven't concluded that there was a sale price listed in the advertisements.

1
2 Q Was there a sale price listed in the advertise-
3 ments?
4 A To the best of my recollection, some did not
5 have and some had. It may have had something like $41,000
6 or so.
7 Q Do you recall what other conditions were or
8 were not included in your offer to sell this house in
9 the advertisements?
10 MR. RIBOWSKY: In any of the advertise-
11 ments? Do you understand the question?
12 THE WITNESS: No.
13 MR. RIBOWSKY: The question was, correct
14 me if I am wrong, as to whether or not, gen-
15 erally speaking, the advertisement contained
16 other conditions of sale other than the sale
17 price.
18 A No.
19 MR. RIBOWSKY: Conditions or restrictions,
20 that is.
21 A No.
22 Q What Chinese newspapers did you decide to
23 insert that advertisement in?
24 A By the way, I recall the name of it now. It's
25 not easy to remember: JEN MIN JIH PAO.

Q What made you decide to insert it in a Chinese circulation newspaper, in this particular newspaper?

A There had been a number of Chinese people buying in the area, so I thought that was a good idea, a good market.

MR. RIBOWSKY: That's not the question. The question is, what made you decide to put it in that paper.

A Well, as I say, there were Chinese people in the area. One of the people that I had spoken to suggested that that was a good place to advertise.

Q Did you consider putting the advertisements in any black circulation newspapers?

MR. RIBOWSKY: The question calls for a yes or no response.

A No.

Q In an Hispanic circulation newspapers, the same question.

A No.

Q How many responses did you receive as a result of those advertisements?

MR. RIBOWSKY: Objection. Are you talking about the Chinese paper or all of them?

MR. HOFFMAN: All of them.

1 MR. RIBOWSKY: All of them. Approximately
2 or precisely, if you know.
3 A Fifty.
4 Q Out of those fifty individuals, how many
5 actually visited those premises to look at the house?
6 A I would say five to ten or so.
7 Q Out of those five to ten, how many were not
8 Caucasian?
9 MR. RIBOWSKY: How many actual visitors
10 to your home were not Caucasian?
11 A I don't recall.
12 Q Do you recall whether or not there were any
13 black visitors to your home?
14 A I don't recall.
15 Q Do you recall whether or not there were any
16 Spanish people visiting?
17 A I don't recall. I didn't make a separation
18 in regard to race.
19 MR. RIBOWSKY: Just answer the question.
20 Q How many Chinese people out of those five to
21 ten visited your home?
22 A I don't recall.
23 Q Out of those five or ten who visited your home,
24 how many made a firm offer to purchase your house?
25

A There was one firm offer made.

Q Was that from these Chinese people who eventually purchased the house?

A Yes.

Q What was that offer?

A The first offer, I guess, was something like $37,000 which was not acceptable to me.

Q Other than the purchase price, was there any other discussion regarding the conditions which you required in the sale of that house?

A No.

Q What are the names of the individuals who purchased your former residence?

A Mr. Steven Chang.

MR. RIBOWSKY: And his wife, I believe, you may add, on information and belief.

MR. HOFFMAN: Off the record.

(Discussion off the record.)

MR. RIBOWSKY: It's just a matter of documented evidence.

Q Do you recall when there was a meeting of the minds between you and Mr. and Mrs. Chang to purchase or to sell the house?

MR. RIBOWSKY: Meeting of the minds?

Q Yes. When you agreed verbally.

MR. RIBOWSKY: When everything was finally agreed to?

MR. HOFFMAN: Right.

A It must have been several weeks.

MR. RIBOWSKY: Don't guess. You know or you don't know. Don't guess.

MR. HOFFMAN: You shouldn't do that.

MR. RIBOWSKY: I instruct the witness not to guess.

MR. HOFFMAN: You can't interrupt him during his answers. It's improper, really. Now, let him make his answers and you have given him general instructions on it.

A I don't precisely recall.

Q When did you sign the contract?

A I believe it was in February, but that you can easily check.

Q How many weeks prior to the time that you signed the contract, or days or months was there a verbal understanding that the house would be sold to Mr. and Mrs. Chang?

A It was a matter of weeks, but I don't precisely recall.

MR. HOFFMAN: Off the record.

(Discussion off the record.)

Q Do you know the name of the attorney who represented the Changs?

A I don't recall now.

MR. RIBOWSKY: I will supply that name and address.

Q Do you recall whether or not there was any understanding that your new residence would not be purchased, or there wouldn't be a title closing, until your former residence was sold?

MR. RIBOWSKY: Objection. Did you say "understanding"?

MR. HOFFMAN: Right.

MR. RIBOWSKY: Between whom?

MR. HOFFMAN: Between, obviously, him and the sellers or anybody representing Mrs. Silberman.

THE WITNESS: If you could rephrase your question.

Q Was there any understanding that you had that your new residence would not be finally purchased with a title closing until after your old residence was sold?

MR. RIBOWSKY: Do you understand the question?

THE WITNESS: Yes.

A I don't believe there was any such understanding.

Q Prior to your entering into the contract to purchase the new residence, did you take any steps to procure a mortgage for the new residence?

A Yes.

Q How many days, weeks or months after you entered into the contract for your new residence did you take those steps?

MR.RIBOWSKY: "First take those steps," I presume?

Q First take those steps.

A About, roughly, a week.

Q How many banks did you contact?

A Several.

Q Do you recall the names of any banks which you contacted?

A The only one I recall now is the Queens County Savings Bank.

Q Did the Queens County Savings Bank offer to give you a mortgage for the new premises?

A Yes, they did.

Q Did they give you a commitment for that mortgage?

MR. RIBOWSKY: Do you know what a "commitment" is?

THE WITNESS: I'm not sure I understand.

MR. RIBOWSKY: Do you know what a commitment is?

THE WITNESS: No.

MR. RIBOWSKY: Shall I explain?

MR. HOFFMAN: Yes, go ahead.

MR. RIBOWSKY: A commitment is a formal piece of paper by the bank in which it commits itself to extend a mortgage to you within a certain number of days if you are ready to buy the house. Do you remember that, sir?

MR. HOFFMAN: Off the record.

(Discussion off the record.)

MR. RIBOWSKY: There was such a commitment forwarded to me by the bank.

Q Was that commitment ever withdrawn by the bank?

MR. RIBOWSKY: The answer is no.

MR. HOFFMAN: Will you produce that commitment without a formal notice to produce?

1 MR. RIBOWSKY: Yes, I will.

2 MR. HOFFMAN: Do you recall the date of

3 that commitment?

4 MR. RIBOWSKY: No.

5 MR. HOFFMAN: Off the record.

6 (Discussion off the record.)

7 Was the commitment under the terms and

8 conditions to which he applied for the mort-

9 gage, was it the same terms for which he applied?

10 MR. RIBOWSKY: The purchase price, you

11 mean?

12 MR. HOFFMAN: Off the record.

13 (Discussion off the record.)

14 MR. RIBOWSKY: The commitment reflected

15 the application in its terms.

16 BY MR. HOFFMAN:

17 Q Did you accept that mortgage commitment?

18 A Yes.

19 Q Did you eventually rescind that acceptance?

20 A I never rescinded it.

21 Q Did you receive a mortgage from that bank in

22 that amount?

23 A No.

24 Q Why? What happened?

25

A Well, I believe it was because of the lawsuit that had been instituted, and they didn't want to give it while that was in progress.

Q So they took back their commitment; is that correct?

A I'm not sure what the legal situation is.

MR. HOFFMAN: If you know, go ahead.

MR. RIBOWSKY: The commitment was extended and has subsequently been extended once again in contemplation of an eventual disposition of the Federal lawsuit and an ultimate removal of the Notice of Pendency on the premises which was the basis of the objection of the bank to issuing the mortgage.

Q Do you recall when the bank had indicated that they had objections to issuing that commitment as long as the Notice of Pendency was on the property?

A The first time, I believe, was right before the closing, before the title closing.

Q I notice that the contract for the purchase of the new premises was entered into on October 8, 1975. You may refresh your recollection.

(Paper handed.)

MR. RIBOWSKY: Does that refresh your

recollection?

A That sounds about right. Yes.

Q The contract also indicates that the closing date would be February 9, 1976, do you recall that?

(Paper handed.)

A I guess so, yes.

Q Did you request that period of time between the contract closing and title closing?

A Yes, I did.

Q What was the reason for that request?

A That I should be able to sell the [illegible] I felt I needed an adequate period.

Q Did you further request that the closing date of February 9, 1976 be adjourned to a later date?

MR. RIBOWSKY: Do you recall?

A I don't precisely recall right now, but it may well have been.

Q Well, to refresh your recollection, the actual closing was April 8, 1976; is that correct?

A Yes.

Q Do you recall why the closing dat[illegible] extended from February 9, 1976 to April 8, 1976?

A Can I go off the record here for a moment?

MR. RIBOWSKY: Do you want to consult

THE WITNESS: I want to consult.

MR. HOFFMAN: Wait a minute, if he doesn't understand --

Q Do you understand the question?

A I don't understand the question.

Q Do you recall why the closing date was extended from February 9, 1976 to April 8, 1976?

A Well, I believe it was taking me some time to find a buyer, and I felt I could use a little bit more time, so I think -- but I don't exactly recall.

Q Did you have a mortgage on your former residence?

A Yes.

Q Do you recall what your equity was between the selling price of $39,500 and what the mortgage was?

A The actual mortgage was, at that time, worth about $15,700. That's how much was left on the mortgage. It's a difference between that and the $39,500.

Q Did Rabbi or Mrs. Sprecher assist you or advise you in anyway in procuring purchasers for your former residence?

A No.

Q Did they assist you or advise you in anyway in trying to get a mortgage for your new residence?

A No.

Q Did you have any understanding as to the condition of the appliances at the time of the closing of title on the new premises?

MR. RIBOWSKY: Would you repeat that for me?

(Question was read back by the reporter.)

MR. HOFFMAN: The working conditions as well, I mean.

A Yes.

Q What was that understanding?

A They weren't in very good condition.

MR. RIBOWSKY: By "understanding" do you mean in the form of an agreement between parties or do you mean by "understanding", knowledge? I'm not sure what you mean.

THE WITNESS: I'm referring to knowledge.

MR. RIBOWSKY: I assume that. You are not referring to an agreement of any form between parties?

MR. HOFFMAN: Not now.

MR. RIBOWSKY: Just knowledge that he had. Okay.

BY MR. HOFFMAN:

Q Did you make any request as to how you desired

1 the appliances to be delivered at title closing in regard
2 to its operation condition?
3 MR.RIBOWSKY: I will object to the ques-
4 tion, unless you be more definitive as to what
5 time reference you are talking about. Did he
6 make a request? When?
7 MR. HOFFMAN: You want me to give prior to
8 the contract closing, at the contract?
9 Q Did you make a request prior to the contract
10 closing?
11 A I would like to understand what "contract
12 closing" means.
13 MR. RIBOWSKY: He means the signing of
14 the contract. Did you make your request be-
15 fore the contract was signed, before that day,
16 regarding any alterations, repairs or improve-
17 ments or changes in the condition of the house.
18 A Not before that time.
19 Q Did you make a request on the day of the con-
20 tract signing?
21 A Yes, I did.
22 Q What was that request?
23 A There were two of them. One was regarding the
24 plumbing in the bathroom and the other, that should be
25

1 fixed, the other was the garage door.

2 Q Now, did they agree, either in writing or

3 otherwise, to repair the plumbing in the bathroom?

4 A No.

5 Q What was the result of your request in regard

6 to the plumbing in the bathroom?

7 A I agreed to go along with their not repairing

8 them.

9 Q Was this request made at the contract execution?

10 MR. RIBOWSKY: The signing of the contract?

11 A Yes.

12 Q When you made that request, did either Mr.

13 Gerald Murray or Mrs. Silberman indicate to you that

14 there would be no deal by having raised that request?

15 A Yes.

16 Q They did allow you to rescind that request, is

17 that it?

18 A That's correct.

19 Q Now, as to the garage door, what was your re-

20 quest?

21 A The garage door was totally dilapidated and

22 I requested that it be replaced.

23 Q What was their response?

24 A They refused.

25

Q Who made the response? Mrs. Silberman or Mr. Murray?

A I believe it was Mr. Murray.

Q Did you take back that request?

A Yes, I did.

Q They allowed you to take back that request?

A Yes.

Q Do you have any recollection regarding a request as to the working conditions of the appliances on that date?

A Repeat the question.

Q I will rephrase it.

Do you recall whether at the contract signing you made any request as to the working conditions of the appliances when the title would be delivered to you?

A No, I didn't.

Q I show you a copy of the contract and ask you to read the second paragraph of the second page of the rider and I ask you whether or not that refreshes your recollection as to the working conditions of the appliances?

MR. RIBOWSKY: Oh, wait awhile. Just one moment. The question was whether he made any demands or warranties, warranties being asserted,

1 as to conditions of appliances at the time of
2 closing?
3 MR. HOFFMAN: Right
4 MR. RIBOWSKY: And his answer was he made
5 no such demands.
6 MR. HOFFMAN: Now I'm asking him whether
7 or not that refreshes his recollection. It may.
8 MR. RIBOWSKY: Does this refresh your recol-
9 lection that you did or didnot make such a de-
10 mand?
11 MR. HOFFMAN: Well, make a request.
12 MR. RIBOWSKY: Or a request.
13 A Well, I thought --
14 MR. RIBOWSKY: Yes, or no. Does this re-
15 fresh your recollection?
16 THE WITNESS: Yes.
17 MR. RIBOWSKY: Okay.
18 Q Where was the contract signing held?
19 A Where was it?
20 MR. HOFFMAN: Off the record.
21 (Discussion off the record.)
22 MR.RIBOWSKY: The contract signing took
23 place in Mr. Murray's office.
24 Q Who was present?
25

MR. RIBOWSKY: That question was already asked.

MR. HOFFMAN: You mean today?

MR. RIBOWSKY: The last time. The answer, if my recollection is correct, is that the parties were there and their attorneys and no one else.

Q Did you sit around a desk or a table during this discussion?

A There were numerous pieces of furniture in the room.

Q Were the discussions relating to the contract execution made in the presence of all parties concerned?

MR. RIBOWSKY: You are talking about all discussions?

MR. HOFFMAN: All discussions at that time.

A Yes, I think so.

Q Do you recall whether Mr. Ribowsky, your attorney, made any requests regarding the operating condition of the appliances?

MR. RIBOWSKY: Do you recall?

A No, I don't.

Q Do you know how the terms reflected in the second paragraph on page 2 of the rider, were inserted

1
2 into the contract?
3 MR. RIBOWSKY: How they came to be in-
4 serted?
5 MR. HOFFMAN: Yes.
6 MR. RIBOWSKY: Do you know, is the ques-
7 tion.
8 A I left that up to my attorney.
9 Q Did you make mention of those conditions, of
10 the conditions of the appliances at the contract signing?
11 MR. RIBOWSKY: I think that question was
12 already asked. I believe his answer was he
13 did not recall at this time.
14 Q Is that your answer?
15 A Yes.
16 Q Other than to Mr. Ribowsky, prior to the con-
17 tract, do you recall raising the concern of the condition
18 of the appliances to anybody else?
19 MR. RIBOWSKY: Objection. I believe you
20 already asked whether before the contract
21 signing date he raised those things, and the
22 answer was in the negative. That's my recol-
23 lection.
24 Off the record.
25 (Discussion off the record.)

Q Subsequent to the contract signing, did you make any request or express your concern about the working conditions of the appliances?

A No.

Q Did you have any understanding --

MR. RIBOWSKY: By "understanding" you mean knowledge?

MR. HOFFMAN: Knowledge.

Q -- as to the purchase price for the new premises?

MR. RIBOWSKY: When?

Q Prior to the contract signing.

A Yes.

Q What was that price?

A $46,000.

Q Do you recall who had indicated to you that the purchase price for the new premises would be $46,000?

MR. RIBOWSKY: Who gave you that knowledge?

A My attorney.

Q How many days or weeks prior to your signing of the contract did you have a verbal agreement as to the purchase price of the new premises?

A I don't precisely recall.

Q Did there come a time, prior to your entering into the contract on October 8, 1976, where you had

1

2 agreed that you would purchase that new premises for

3 $46,000?

4 A Yes.

5 Q How many days or weeks prior to your entering

6 into that contract did you have this verbal agreement?

7 A I don't precisely recall.

8 Q Do you recall whether or not it was days or

9 weeks?

10 A It's hazy.

11 Q Do you have any notes or do you keep any diary

12 or did you make any notations on the calendar which

13 would refresh your recollection?

14 A I'm not a lawyer.

15 Q Just answer the question.

16 A No.

17 Q Prior to the contract signing, did you have

18 any discussions with Mrs. Silberman or any of her family,

19 any members of her family, or any agents who represented

20 Mrs. Silberman regarding the purchase of the new house?

21 MR. RIBOWSKY: Objection. That question,

22 I believe, was answered.

23 MR. HOFFMAN: It may have been. What's

24 his answer?

25 MR. RIBOWSKY: My recollection is that it

was asked and the answer was in the negative.

Q Is that right?

A That's right. The answer was no.

Q Did you make any offer regarding the purchase of the new premises which was below $46,000?

A No.

Q Prior to your acceptance of the $46,000 figure, was there any higher demand given to you regarding the purchase of the new house?

A No.

Q In other words, it had always been $46,000?

A That is correct.

Q You had knowledge that the house was vacant; isn't that true?

A Yes.

Q Did you also have knowledge that the house would remain vacant until the title would be delivered to you?

A Yes.

Q Did you express any concern, either prior to the contract signing or at the contract signing, regarding dilapidation of that house, either to vandalism or otherwise between the contract signing and the delivery of the title?

MR. RIBOWSKY: Expressed concern to whom?

MR. HOFFMAN: I'm asking him anybody.

MR. RIBOWSKY: Did you express concern to anybody? That would include me, his wife. That would include Mr. Murray. That would include anybody.

A Yes.

Q To whom did you express that concern?

A I believe it was to my attorney, and the upshot of it was simply --

MR. RIBOWSKY: You are directed to answer the question and nothing else.

Q What was your understanding regarding what would happen if there was further dilapidation to that house between contract closing and delivery of title?

MR. RIBOWSKY: At this time, you mean "understanding" to be a form of agreement or knowledge?

MR. HOFFMAN: Knowledge.

MR. RIBOWSKY: Knowledge again. Do you understand the question?

Q Did you have any understanding as to what your protection would be, if any, regarding any dilapidation to that house between contract signing and the delivery

of title?

A Repeat the question, please.

(The question was read back by the reporter.)

A Yes.

Q What was that understanding?

A The understanding was that it was supposed to be "as is".

Q And is it your further understanding, or was it your further understanding that, if somehow that house would be partially destroyed, fully destroyed by vandalism, you would taking that risk; is that correct?

MR. RIBOWSKY: I'm going to object to that question. It calls for conclusions as drawn in a document which is already on exhibit, and the document speaks for itself as to the terms of vandalism.

MR. HOFFMAN: Wait a minute. I want to understand what his understanding was.

MR. RIBOWSKY: Do you want him to read back, first?

MR. HOFFMAN: If he recalls.

MR. RIBOWSKY: The question is, do you recall.

A I recall that if there was major damage to the

house, then redress was to be made on the major damage as explained to me by my attorney.

A Did you have any understanding as to what would be considered major or minor damage or how that would be arrived at?

A That was somewhat vague.

Q Was this concern discussed at the contract signing?

A No.

Q Do you recall whether or not there was an understanding as to how it would be determined whether or not the damage was major or minor?

A No.

Q I ask you then how would it be determined whether or not damage was major or minor?

A I don't recall. It's vague.

Q Wasn't that a major concern of yours?

A I left it up to my attorney. I trusted him.

Q Were there any conditions or concerns which you raised after the signing of the contract?

A Just that I be allowed to have a key, to be able to go in there and see that everything was all right.

Q When did you raise that?

A I don't precisely recall that.

Q Were you given the key?

A Yes, I was.

Q Who gave you the key?

A That I don't recall either. I just remember that I had the key.

Q Do you recall whether Rabbi Sprecher or Mrs. Sprecher gave you the key?

A No.

Q You don't recall?

A No.

Q Did you get title insurance on this house, do you know?

MR. RIBOWSKY: Yes.

MR. HOFFMAN: Will you provide a copy of that title insurance without a notice to do so?

MR. RIBOWSKY: Yes.

Q Subsequent to the signing of the contract for the new premises, did you have any discussions with Mrs. Silberman or any members of her family or any agent of Mrs. Silberman?

MR. RIBOWSKY: After the contract signing?

MR. HOFFMAN: Right.

MR. RIBOWSKY: Between the contract signing and the closing, I assume?

MR. HOFFMAN: Right.

A No.

Q Other than the conditions and requests which you previously testified to, which were raised at the contract signing, do you recall any other conditions or requests made by either party at that time?

A No.

Q Do you recall how long the session at which the contract was signed took?

A No.

Q Would you know whether or not it was a half an hour, an hour or several hours or minutes?

A It's a guess at this point.

MR. RIBOWSKY: Don't guess. You are directed not to guess.

A I don't recall.

Q Can you give your best approximation as to how long that session took?

A That's a guess.

MR. HOFFMAN: Can he answer that?

MR. RIBOWSKY: No. If he has to qualify his answer as a guess, I'm directing him not to guess.

Q Was the delivery of the deed on your new

1 premises after the delivery of the deed from you to the
2 Changs?
3 MR. RIBOWSKY: Do you know which came first,
4 the closing on your old house or the new one?
5 A The closing on the old house.
6 Q Was that because you required the proceeds
7 from the sale of your old house to purchase the new house?
8 MR. RIBOWSKY: I think he already testified
9 to that.
10 Q Let me put it this way. Did you use the pro-
11 ceeds of the sale of the old house to purchase that new
12 house?
13 A Yes.
14 Q At the signing of the contract, was there any
15 discussion regarding Mr. and Mrs. George Duckett?
16 MR. RIBOWSKY: You are talking about the
17 new house?
18 MR. HOFFMAN: Yes, the new house.
19 A Repeat the question.
20 Q Were the names of Mr. and Mrs. George Duckett
21 raised or mentioned at the signing of the contract?
22 A No.
23 Q Was the fact that there had been a dispute
24 regarding the sale of the new premises to other purchasers
25

1 mentioned at the signing of the contract?

2 MR.RIBOWSKY: Objection. That request was

3 already asked and answered in the negative at

4 the previous session.

5 Q Was there any discussion prior to the signing

6 of the contract regarding either Mr. or Mrs. George

7 Duckett?

8 MR. RIBOWSKY: You are directed to answer

9 that question to reveal any discussions except

10 any discussion that you had between yourself

11 and your attorney.

12 A No.

13 Q Prior to the signing of the contract did you

14 have a discussion with Mr. Ribowsky regarding these pur-

15 chasers whether they were mentioned by name or otherwise?

16 MR. RIBOWSKY: Objection.

17 MR. HOFFMAN: I am not going into the

18 substance.

19 MR. RIBOWSKY: All right. Repeat the

20 question. Did you hear the question?

21 (The question was read back by reporter.)

22 A My recollection is only that he told me there

23 was a lawsuit on the house.

24 Q Did you have an understanding that if that law-

25

1 suit was successful, that you could be required to move
2 from that house?
3 MR. RIBOWSKY: Is that question predicated
4 on prior to closing or prior to contract?
5 MR. HOFFMAN: Prior to contract signing.
6 MR. RIBOWSKY: Prior to contract signing,
7 I see.
8 THE WITNESS: Repeat the question, please.
9 (The question was read back by reporter.)
10 A It was raised as a vague possibility.
11 Q Did you express any concern regarding that
12 possibility?
13 MR. RIBOWSKY: Where and when? To whom?
14 MR. HOFFMAN: To anybody.
15 MR.RIBOWSKY: When?
16 MR. HOFFMAN: On or about the signing of
17 the contract.
18 A I recall that I inquired about it, but that it
19 was stated to be vague and I therefore decided to go
20 along with it.
21 Q I show you the last paragraph of the right
22 side of the contract wherein it states that "No broker
23 was used and that Rabbi Sprecher had first told you about
24 the vacancy of this new house." Do you recall that para-
25

1
2 graph?
3 MR. RIBOWSKY: Do you recall that as part
4 of the contract?
5 Q As part of the contract.
6 A Yes.
7 Q Do you recall whether or not your contract
8 with the Changs had that paragraph included in it?
9 A Not with Rabbi Sprecher.
10 MR. RIBOWSKY: Do you recall? The answer
11 is yes or no.
12 Q Do you recall whether or not there was any
13 statement that no broker was used?
14 MR. RIBOWSKY: Do you recall?
15 A I don't recall. No.
16 MR. RIBOWSKY: The simple answer to that
17 is that the contract would be supplied.
18 Q Do you recall or do you know how that clause
19 got into this contract?
20 A No.
21 Q At the delivery of the title or what's called
22 the title closing of the new house, where was that held?
23 MR. RIBOWSKY: Do you recall?
24 A I don't precisely recall.
25 MR. RIBOWSKY: The title closing was held

at Mr. Murray's office.

Q At that time, do you recall whether or not you made any request or raised any further conditions regarding the purchase of that house?

MR. RIBOWSKY: By way of modification of the contract?

MR.HOFFMAN: Right. Well, anyway.

A I don't recall such a thing.

Q Between the execution of the contract and the delivery of the title, were there any other negotiations whatsoever, whether they be minor or major, regarding the purchase of that house?

A No.

Q Other than your own funds, did you use any other funds to purchase the new house?

A The mortgage.

Q Well, you received a mortgage for the new house. I don't understand. Other than your personal funds and the proceeds which you got from your old house.

A I had a mortgage.

MR. RIBOWSKY: That's his answer. He got a mortgage. That's his answer.

Q Who did you get the mortgage from?

A From Mrs. Silberman.

1
2 Q Did you have an understanding at the signing
3 of the contract that you would receive a mortgage from
4 Mrs. Silberman?
5 MR. RIBOWSKY: By "understanding" you mean --
6 MR. HOFFMAN: Knowledge.
7 MR. RIBOWSKY: Did you have knowledge at
8 the time of the signing of the contract that
9 you would receive a mortgage?
10 THE WITNESS: No.
11 Q At the delivery of title, were there discus-
12 sions as to Mrs. Silberman providing you with a mortgage?
13 MR. RIBOWSKY: The delivery of title?
14 MR. HOFFMAN: Yes.
15 MR. RIBOWSKY: The title closing.
16 Off the record.
17 (Discussion off the record.)
18 Q At the delivery of title, what discussions did
19 you have regarding Mrs. Silberman's taking a mortgage?
20 A Just that she would give me a mortgage.
21 Q Did you have that understanding prior to the
22 delivery of the title?
23 A Yes.
24 Q With whom was that understanding reached?
25 MR. RIBOWSKY: By "understanding" he

means agreement.

A It was reached through my attorney. I believe, Mr. Murray.

Q At the time of the delivery of title, were there any discussions regarding Mr. and Mrs. Duckett, either by name or otherwise, as the previous intended purchasers of the house?

A The delivery of title?

Q Yes.

A Just insofar as the lawsuit was concerned that caused me to have to get the mortgage another way.

Q Then what was the substance of the conversation regarding the lawsuit?

A I don't exactly recall.

Q Was there any discussion as to the merits of the lawsuit?

A Just insofar as it affected the mortgage.

Q What was the discussion as to how it affected your mortgage?

A Well, that I couldn't get it at the time through the Queens County Savings Bank.

Q Regarding either the sale and purchase of this house or the pending lawsuit, did you have any discussions prior to today with Rabbi or Mrs. Sprecher?

1
2 A I don't recall that.
3 Q You have never discussed this lawsuit or your
4 testimony here today or your possible testimony here to-
5 day?
6 MR. RIBOWSKY: His answer is he doesn't
7 recall.
8 A I don't recall.
9 Q What about with Mrs. Silberman or any members
10 of her family or any agents of Mrs. Silberman, do you
11 recall any discussions?
12 A No.
13 Q You are sure of that? You don't recall?
14 A I don't recall.
15 Q Who did you discuss that deposition with prior
16 to today?
17 A My attorney.
18 Q Other than your attorney, anybody else?
19 A Just my attorney and my wife.
20 Q Is your memory now refreshed as to whether or
21 not you had a discussion with Rabbi Sprecher or Mrs.
22 Sprecher regarding the deposition and this lawsuit?
23 A No, I don't recall.
24 Q Have any of your neighbors talked to you about
25 this pending lawsuit?

A No.

Q Do you have any knowledge of any neighbors who have discussed this lawsuit?

MR. RIBOWSKY: With whom?

MR. HOFFMAN: With each other.

MR. RIBOWSKY: With each other?

Q Answer the question.

A Possibly Rabbi Sprecher.

Q Do you have knowledge, is the question.

A No. I don't have knowledge.

Q Have you heard?

A No.

Q As to whether or not anybody any discussion regarding the lawsuit?

A No.

Q Have you had any personal discussion with Mr. Gerald Murray regarding this lawsuit?

A No.

Q Have you had any meeting between Mr. Ribowsky and Mr. Murray and yourself regarding this lawsuit? (Continued.)

A Only what was discussed at the title closing.

MR. HOFFMAN: I have no further questions.

Subscribed and sworn to before me

this day of , 1976.

C E R T I F I C A T E

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

I, ALLEN MC GILL, a Notary Public within and for the State of New York, do hereby certify:

That MENAHEM MANDEL BEER, the witness whose deposition, held on October 20, 1976, is hereinbefore set forth, was duly sworn by me, and that such examination is a true record of the testimony given by such witness.

I FURTHER CERTIFY that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 12 day of November, 1976.

Allen McGill
ALLEN MC GILL

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

GEORGE DUCKETT and :
DELORES DUCKETT,
:
Plaintiffs,
:
-against-
:
EVE SILBERMAN,
:
Defendant.
:
- x

200 West 57th Street
New York, New York

August 12, 1976
10:30 A.M.

Deposition of MENAHEM MENDEL BEER,

taken on behalf of the Defendant, pursuant

to Notice Dated March 25, 1976.

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GEORGE DUCKETT,
Also Present

---oOo---

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that the sealing, filing and certification of the within deposition be and the same are hereby waived; and the Defendants will furnish a copy to said Plaintiff, without charge.

IT IS FURTHER STIPULATED AND AGREED that the witness may be sworn at the taking of this deposition before any Notary Public of the State of New York or Commissioner of Deeds of the City of New York, and that the witness may read, sign and swear to his

testimony when the same is transcribed before any Notary Public of the State of New York or Commissioner of Deeds of the City of New York, with the same force and effect as if signed and sworn to before a Judge of the above named Court or the Clerk thereof.

IT IS FURTHER STIPULATED AND AGREED that the within testimony may be used if not signed with the same force and effect as if signed, provided it is delivered to Counsel for said Witness for signature thereof.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of questions, be and the same are hereby reserved to the trial of this action.

---oOo---

M E N A H E M M E N D E L B E E R, after having been first duly sworn assumed his seat as a witness and testified as follows:

MR. HOFFMAN: It is further stipulated between Larry Ribowsky, attorney for Dr. Beer, and Thomas Hoffman, attorney for Plaintiff, George Duckett, that the witness fee of $25.00

has been delivered and received by Dr. Beer.

EXAMINATION BY MR. HOFFMAN:

Q What is your name?

A Menahem Mendel Beer.

Q Where do you reside?

A 141-01 77th Avenue, Flushing, New York 11367.

Q How long have you been residing at that address?

A March, April. The closing of the house.

MR. MURRAY: If I may, I would like to put something on the record.

Although I appear as attorney for the Defendant, I am here today on behalf of the witness, Ravelle Brickman, and she has been excluded from this examination, and should she become a party at a later date to this suit, we are going to object to this testimony since she is excluded at this time.

Q Prior to that time where was your residence, prior to March of '76?

A 150-40 77th Avenue, also in Flushing.

Q How long were you residing at that address?

A About six, seven years.

Q How far in distance is your former residence

1
2 from your present residence?
3 A About half a mile or so.
4 Q Are you married?
5 A Yes.
6 Q Do you have children?
7 A Yes.
8 Q How many children?
9 A Five children now.
10 Q As to your first residence, could you de-
11 scribe the number of rooms which you had?
12 A Six rooms, an attached house.
13 Q What do you mean by an attached house?
14 A Attached on both sides to other houses.
15 Q How many bedrooms were there?
16 A Three bedrooms, smaller than the present
17 bedrooms.
18 Q Could you describe the number of rooms in
19 your present residence?
20 A There are six rooms. They are larger than
21 the other house.
22 There is also an atic, which could be converted
23 into another bedroom.
24 Q There are three bedrooms in this present
25 house, is that correct?

A That's correct.

Q Are each of the three bedrooms larger than each of the three bedrooms in your former house?

A Yes.

Q How much larger would they be?

A Well, the house is two feet wider and seven feet longer, so you can take it from there.

Q Do you have an estimate of how much bigger the bedrooms are?

A It's a question of area, and it's quite a bit larger.

Q When did you decide to buy or purchase the new residence?

MR. RIBOWSKY: Objection as to form.

Q Did there come a time when you decided to sell your former residence?

A Yes.

Q When was that?

A After I decided to buy the present home.

Q When did you decide to buy a new home?

MR. RIBOWSKY: Objection.

Q Did you decide to buy a new home?

A Yes.

Q When did you decide to buy the new home?

MR. RIBOWSKY: Objection. You haven't specified which home. I presume you are talking about the house he presently resides in.

Q The new home is your present residence, and your former home means your old residence, okay? We are just talking about two houses.

MR. HOFFMAN: Is that clear now?

MR. RIBOWSKY: Yes, fine.

Q When did you decide to buy your new home?

A After we had been informed about it.

Q When did you decide to buy a new home?

A We had been looking for sometime in the neighborhood to try to obtain larger quarters. At that time I had four children; my wife was pregnant, and we decided we needed larger living quarters.

Q Could you specify the time or period when this was done.

MR. RIBOWSKY: What was done?

MR. HOFFMAN: When he decided that he needed new quarters.

A For several years we had been thinking about it.

Q Did you go to any brokers?

MR. RIBOWSKY: At what period of time?

MR. HOFFMAN: I'll get it in there.

Q Did you decide to go to any brokers when you made a decision that you needed larger living quarters?

A No.

Q What steps did you take to find larger living quarters?

A Spoke to friends in the neighborhood who were aware of houses that were being sold.

Q What are the names of these people?

MR. RIBOWSKY: I object, and I instruct him not to answer.

MR. HOFFMAN: Off the record.

(Discussion off the record.)

Just for the record, whenever you object, I assume you are also instructing him not to answer?

MR. RIBOWSKY: That is my client's understanding of it also.

Q Did you look at any other houses, other than your present residence?

MR. RIBOWSKY: From when to when? What period of time?

Q From the period of time when you decided you

needed larger living quarters.

A Yes, I don't recall any specific one right now, but we looked.

Q You don't have any addresses or names of individuals?

A No.

Q Do you know a Rabbi Sprecher?

A Yes, I do.

Q In what capacity do you know him?

A We know him socially. My wife and I know the Sprechers socially for many years.

Q Do you belong to the same congregation?

A No.

Q How did you find out or ascertain that your present residence which you are living in was available?

A Rabi Sprecher called me and he mentioned that there was a house for sale on his block, would I like to have a look at it.

Q When was that?

A I don't know. Sometime in September or so.

Q Do you recall whether it was early or late September?

A It's a little hazy. Sometime in September.

Q That's of '75, for the record?

A '75.

Q Prior to that time did Rabbi Sprecher tell you of any other houses which were available?

A No.

Q When did you first tell Rabbi Sprecher that you were looking for a new house?

A We had just indicated that at some point we were interested in larger quarters.

Q In relationship to September of '75, when would that have been? A couple of months, a year?

A A year, two years he was aware of it.

Q He was aware of it over a period of years?

A Yes.

Q Do you know prior to September of '75 did you know the owners of your present residence?

A No.

Q Did you know Ravelle Brickman?

A No.

Q Did you know prior to September of '75 Mr. Peter Smetana or Teitleman Realty?

A No.

Q During that telephone conversation with Rabbi Sprecher was the fact that there were prospective purchasers to that house made known to you?

A No.

Q Was the question of race or that issue ever raised in that conversation?

A No.

Q Was a question of religion raised in that conversation?

A No.

Q What, to the best of your recollection, was the conversation between you and Rabbi Sprecher in September, that first conversation?

MR. RIBOWSKY: I am going to object to that question as already asked and answered.

MR. HOFFMAN: I think he said what was the substance of the conversation.

Q What exactly did he say?

MR. RIBOWSKY: I am going to object to it, because the question was already asked and answered.

Q Did he tell you how much the house would be offered for?

A I don't recall if he did at that time.

Q Did he tell you the location of the house?

A Yes.

Q Other than that information that there was

a house available and the location of the house, did he give you any other information during that conversation?

A That was it, just that there was a house available, would I like to look at it.

Q After that conversation what steps, if any, did you take regarding that house, the new house?

A I took a look at the house.

Q Was there anybody in the house at the time you looked at it?

A No.

Q Was it open? In other words, were you able to go inside the house?

A No.

Q So you just looked at it from the outside?

A First I looked from the outside, yes.

Q How soon after the conversation with Rabbi Sprecher did you do that, to the best of your recollection?

A A week or two.

Q Did Rabbi Sprecher have a conversation also with your wife regarding that house?

A It was just with myself.

Q When you went over to the house did you go

1

2 by yourself or with anybody else?

3 A Well, I walked with my wife.

4 MR. HOFFMAN: Did he answer the question

5 about when he went to the house?

6 MR. RIBOWSKY: He said about a week or so

7 afterwards.

8 Q Do you know what part of September that

9 would have been, to the best of your recollection?

10 A Middle or late September, or something.

11 Q When you saw the house what were the next

12 steps that you took, if any, regarding the house?

13 A Well, I saw the inside of the house as

14 well.

15 Q You did. How did you get inside the house?

16 A Rabbi Sprecher, that is his wife, let me in.

17 Q Rabbi Sprecher's wife, she gave you the

18 keys, is that it?

19 A She let me in.

20 Q She was inside at that time?

21 A She opened the door and let me in.

22 Q She was inside of the house?

23 MR. RIBOWSKY: I object.

24 MR. MURRAY: Note my objection to it as

25 leading the witness.

MR. HOFFMAN: This is a deposition.

MR. MURRAY: Note my objection.

Off the record.

(Discussion off the record.)

Q How did you get in?

A Mrs. Sprecher opened the door with a key and let me in.

Q Did you meet Mrs. Sprecher prior to the time you went into that house?

MR. RIBOWSKY: I object. I don't understand the question; I presume my client doesn't either.

MR. HOFFMAN: Let me tell you something --

MR. RIBOWSKY: Off the record.

(Discussion off the record.)

A I think I said that she said that she opened the door with a key and let me in.

Q She could have done that having walked with you.

A She walked in with me.

Q Where did you meet her justeb fore you went in the building? Where did you meet her, outside the building or inside the building?

A Outside the building.

Q Where outside the building?

A In front of the house.

Q Had you arranged to meet her in front of the house at that time?

A Yes.

Q Did you have a subsequent conversation with Mrs. Sprecher after your first conversation with Rabbi Sprecher?

A Yes, after I had seen the house from the outside, we spoke to her and asked to see the house inside.

Q Did Rabbi Sprecher indicate to you, or did Mrs. Sprecher indicate to you what authority they had as far as the owners were concerned in showing you this house?

A No.

MR. MURRAY: Note my objection.

Q Did they indicate who you should contact if you were interested in the house?

Were you to get back to Rabbi Sprecher?

A They mentioned Mrs. Silberman had a lawyer, Mr. Murray.

Q When you saw the house, when you went inside the house, Mrs. Sprecher was there, is that

correct, the first time you went inside the house?

MR. MURRAY: Would you read that question back, I'm sorry.

(Whereupon the reporter read back the last question.)

Q Was Mrs. Sprecher there? I believe you just testified she opened the door when you went inside the house to look at it.

A That's right.

Q You had a conversation with her regarding the house?

MR. MURRAY: Note my objection as leading the witness.

Q Did you have a conversation with her regarding the house?

A No.

Q What, if anything, did she say to you and did you say to her?

A I don't recall.

Q Did she mention to you that there was a prospective purchaser for that house at that time?

A No.

Q Was race or religion discussed in anyway?

A No.

Q Did you have a conversation with Mrs. Sprecher regarding the condition of the house?

A I don't recall that. I saw the house, so I knew the condition.

Q When you went inside the house did Mrs. Sprecher walk with you into the bedrooms? Where was she?

A That's hard to recall now.

Q Was anybody else there other than you, your wife, and Mrs. Sprecher?

A No.

Q Did Mrs. Sprecher mention any purchase price at that time?

A No. I don't recall anyway.

Q Did you know at that time what that house was being sold for?

A Not accurately. I don't recall exactly whether I had some approximate knowledge at that time or not.

Q Do you recall who told you what the purchase price for that house was?

MR. RIBOWSKY: The first time?

MR. HOFFMAN: Yes.

A Well, we found out through Mr. Murray.

Q So the first time, to the best of your recollection, was from Mr. Murray?

MR. RIBOWSKY: He said through Mr. Murray.

Q From whom did you find out initially what the purchase price was?

A I had Mr. Ribowsky call Mr. Murray about it, and he informed me.

Q You contacted your lawyer?

A Yes, I did.

Q When was that after you saw the house, after you went inside the house?

A Approximately a week or so, it's a little hazy.

Q How much after the time you went to just look at the house from the outside did you arrange to go inside the house to look at it, the next day, or a week later?

A A week or so, I guess, to the best of my recollection. It's a little hazy.

Q Do you recall what period of time in September you called Mr. Ribowsky?

A Must have been towards the end of September.

Q Were you prepared to make an offer as to the amount you would pay for that house?

MR. RIBOWSKY: Objection.

MR. HOFFMAN: What grounds?

MR. RIBOWSKY: You have to be specific as to what point.

MR. HOFFMAN: I am just asking him was he prepared.

MR. MURRAY: I join in the objection.

Q In September were you prepared to make an offer on that particular house?

MR. MURRAY: Note my objection.

MR. RIBOWSKY: I'll let him answer.

A I was prepared to hear what the price was, and if the price was right, I was willing to make an offer.

Q How many conversations did you have with Rabbi Sprecher regarding this house?

MR. MURRAY: Note my objection.

MR. RIBOWSKY: I object to that question also.

Q You had one telephone conversation with Rabbi Sprecher, is that correct?

A Yes.

Q I believe you mentioned you had another conversation with Mrs. Sprecher to arrange to go in-

side the house?

A Yes.

Q In September did you have any other conversations with Rabbi Sprecher?

MR. MURRAY: Objection.

MR. HOFFMAN: I don't think you can instruct him not to answer. You can object for the record.

MR. RIBOWSKY: Then I will, for the record, join in the objection and instruct him not to answer.

MR. HOFFMAN: Why? How many other conversations did you have with Rabbi Sprecher, if any, in September other than the ones you've mentioned.

MR. RIBOWSKY: He could have spoken to him about the fourth race at Aqueduct, and I don't think that's relevant to this EBT.

MR. HOFFMAN: It doesn't matter.

MR. RIBOWSKY: I am going to object to the question.

Q Did you talk with Rabbi Sprecher again regarding this house?

A I don't recall any such conversation.

Q Did you talk with Mrs. Sprecher regarding this house in September of '75, subsequent to the time you arranged to enter the house?

A Not that I recall.

Q Did you have any conversations in September with any individuals in the community regarding that house?

MR. RIBOWSKY: Objection.

MR. MURRAY: Do you want to read that question back?

(Whereupon the reporter read back the last question.)

Q Did anybody call you in September, other than Rabbi Sprecher or Mrs. Sprecher, or your lawyer regarding that house?

A No.

Q Did anybody call you in October or November, other than the individuals mentioned?

MR. RIBOWSKY: Objection.

Q Did you ascertain on or about September '75 that there was a prospective purchaser for that house?

A No.

Q Did you ascertain in or about September or

October of '75 that a prospective purchaser for that house was black?

A No.

Q Did you ever receive that knowledge?

A Yes.

Q When was the first time you received that?

A When litigation was begun on the house.

Q How did you receive that knowledge?

A My lawyer informed me of it.

Q Do you recall approximately when you consulted your lawyer regarding the purchase of this house?

MR. MURRAY: Note my objection as being asked and answered.

Q When did he say, the end of September?

MR. MURRAY: Off the record.

(Discussion off the record.)

Q By the way, do you know a Mr. Rosenberg, who lives on --

MR. RIBOWSKY: What's his first name?

MR. HOFFMAN: I don't know.

Q Who lives on 71st Road, I believe?

A No.

Q You don't know anybody by the name of Rosen-

berg?

MR. MURRAY: I object to that. You just asked him a question, and now you asked another question.

Q Did you talk to a Mr. Rosenberg, to the best of your recollection regarding this house during the fall of '75?

A No.

Q I believe you stated that you called your lawyer towards the end of September regarding this house?

MR. MURRAY: Note my objection as being asked and answered.

Q Did you get information as to the names of the owners of that premises?

MR. RIBOWSKY: At what point in time?

Q When you went in to look at that house?

A Yes, it was mentioned that Mrs. Silberman owned it.

Q Did you call Mrs. Silberman?

MR. RIBOWSKY: I object to that question as being asked and answered.

Q Other than your lawyer, did you call anybody else regarding the purchase of that house?

A No.

MR. RIBOWSKY: At what point in time?

MR. MURRAY: You mean right after he saw it?

MR. HOFFMAN: In the fall of '75.

MR. RIBOWSKY: Repeat that question again.

Q Other than your lawyer, did you call anybody else regarding the purchase of this house?

A No.

MR. RIBOWSKY: Do you mean to include a bank for mortgages and things such as that?

MR. MURRAY: Or family members or friends?

MR. HOFFMAN: No, regarding purchasing the house.

MR. RIBOWSKY: I am going to object to the form of the question as being too broad. You can ask questions, did you call the bank, did you call your cousin --

Q At any point did you speak to Mrs. Silberman regarding this house?

A Any point?

MR. RIBOWSKY: From when to when?

Q September of '75, we are dealing with the fall of '75.

A It was a long time ago.

1
2 Q Did you ever talk to Mrs. Silberman?
3 MR. RIBOWSKY: Would you like to limit it
4 to between the time he was first aware of the
5 house being available up until contract or
6 closing, or what?
7 MR. HOFFMAN: To the fall of '75. He says
8 that's too broad.
9 MR. RIBOWSKY: When does the fall end?
10 THE WITNESS: December 21.
11 Q So you know when it ends.
12 During the fall of '75 did you talk to Mrs. --
13 A The first time I spoke to her was at
14 the contract.
15 Q Did you talk to her again subsequent to
16 the time of the contract and prior to the time of
17 closing?
18 A I don't recall. There was at one time
19 after the contract, she gave me a key to the house,
20 so there must have been a conversation, but I just
21 don't recall details.
22 Q Other than that conversation do you recall
23 any other conversations with her from contract closing
24 to title closing?
25 A I don't recall that.

1 MR. MURRAY: Off the record.
2 (Discussion off the record.)
3 Q Did you talk to Mrs. Brickman, Ravelle
4 Brickman, regarding the purchase of this house between
5 September '75 until title closing?
6 A No, I didn't.
7 Q Did you talk to any other members of the
8 owner's family from September '75 until title closing,
9 regarding this house?
10 A No.
11 Q Did you talk to any brokers in September
12 '75 until title closing?
13 MR. MURRAY: Note my objection.
14 Q Regarding your purchase of this new home?
15 MR. MURRAY: Note the witness indicated
16 he did not consult with any brokers about the
17 house, but of course, it's his witness.
18 Q You didn't talk to any brokers regarding
19 the house?
20 MR. RIBOWSKY: I am going to repeat the
21 same objection.
22 Q Between September '75 until title closing,
23 did you talk to a Mr. Peter Smetana?
24 A No.
25

Q Do you know a Peter Smetana?

A I have heard of him, yes. He may have spoken to me at some point, not about this house though, and not during that time.

Q When did you talk to him?

A I don't recall. I remember there were efforts to sell me other houses, and I was speaking to various brokers. I don't recall who. He's one of the brokers in the neighborhood.

Q Do you recall talking to him?

A I don't know.

Q Do you recall talking, going into Teitleman Realty?

A No, I don't.

Q At the time you called your lawyer were you advised --

MR. RIBOWSKY: The first time?

MR. HOFFMAN: The first time. The end of September I believe he said.

Q Were you advised at that time the purchase price of the house?

MR. RIBOWSKY: Objection. I am going to object to any conversation between Dr. Beer and myself as privileged.

Q When did you retain Larry Ribowsky to represent you in the purchase of this house?

A He's been my lawyer for sometime beforehand.

Q My question is: When did you retain him to purchase the new house?

A I think I answered before that sometime the end of September I thought I called him.

Q Did you enter into a retainer agreement regarding the purchase of this new house?

MR. RIBOWSKY: Objection.

Q Did you enter into a retainer agreement regarding the sale of your old house?

MR. RIBOWSKY: Objection.

Q Who represented you in the sale of the old house?

MR. RIBOWSKY: Objection, but I will permit him to answer the question.

A In the sale of the old house?

MR. RIBOWSKY: Who represented you in the sale of your former house?

THE WITNESS: Ribowsky.

Q Did you ascertain the purchase price of the house?

MR. RIBOWSKY: Objection. The question is

overly broad; it should be more specific to time.

Q Did there come a time when you found out what the house was being sold for?

A Yes.

Q When would that have been?

A General time frame when I had mentioned towards the end of September.

Q From whom?

A From Mr. Ribowsky.

MR. HOFFMAN: Off the record.

(Discussion off the record.)

Q What did Mr. Ribowsky tell you?

MR. RIBOWSKY: Objection.

Q Did you ascertain from anybody else, other than Mr. Ribowsky, what the purchase price of the house was?

A No.

MR. MURRAY: I want to hear the last question.

(Whereupon the reporter read back the last question.)

Q Did you negotiate with anybody else for the purchase price of this house, other than Mr. Ribowsky?

MR. RIBOWSKY: Through Mr. Ribowsky.

Q Other than through Mr. Ribowsky?

A No.

Q I presume that there were absolutely no negotiations directly with the owner or any agent of the owner of the new premises?

MR. MURRAY: Note my objection, since the previous answer was obvious.

Q I just want to pin it down.

A No.

Q Prior to that contract closing, the time you entered into the contract with Mrs. Silberman, did you take any steps to sell your former house?

MR. RIBOWSKY: Prior?

MR. HOFFMAN: Prior.

A No.

Q At closing, or at the signing of the contract, who was present, other than yourself --

MR. MURRAY: I object to that.

Q (Continuing) -- other than yourself and Mrs. Silberman?

MR. RIBOWSKY: Objection.

MR. HOFFMAN: You are telling him not to answer?

MR. RIBOWSKY: He has previous instructions not to answer until I permit him.

MR. HOFFMAN: Could you tell me the basis of it? I don't know why I can't find out who was there.

MR. RIBOWSKY: To begin with, you haven't asked if anybody was there.

MR. HOFFMAN: Don't play games with me.

Q Was there anybody else at the time of contract closing present, other --

MR. MURRAY: When the contract was signed?

Q Who was present at the contract closing, is that okay?

MR. MURRAY: Contract signing.

MR. RIBOWSKY: The signing of the contract. Go ahead.

A I recall Mr. Ribowsky, Mr. Murray, and Mrs. Silberman, and my wife, and myself.

Q What occurred at that signing? What was said?

MR. RIBOWSKY: Objection.

Finish the question.

Q Was there any conversation at the signing of the contract?

MR. RIBOWSKY: Objection.

MR. MURRAY: I join in the objection.

Q Was there any discussion -- we are talking about the time when you signed that contract -- regarding the condition of the house?

MR. RIBOWSKY: Objection.

MR. MURRAY: Off the record.

(Discussion off the record.)

MR. RIBOWSKY: First of all, you haven't specified it; you haven't narrowed it down as to who the conversation may have been between.

Q Was there any conversation between Mr. Ribowsky and Mr. Murray regarding the condition of the house?

MR. MURRAY: Objection.

MR. RIBOWSKY: Say that you know of.

Q That you overheard.

MR. MURRAY: Note my objection.

MR. RIBOWSKY: I'll join in that objection.

Q Was there any conversation you overheard between Mr. Ribowsky and Mrs. Silberman?

MR. MURRAY: Note my objection.

MR. RIBOWSKY: I join in the objection.

Q Did you have any conversation with Mr. Murray?

MR. MURRAY: Note my objection.

MR. RIBOWSKY: Objection.

MR. HOFFMAN: What is the basis of it?

MR. RIBOWSKY: That again it is just a general question and overly broad.

Q At that time.

MR. MURRAY: May I make a suggestion. Since you feel our objections aren't founded, why don't you continue this, because we are going nowhere at this point.

MR. HOFFMAN: I don't know the basis of your objections.

MR. MURRAY: You represent Mr. Duckett. Your interest is only to him. It's not your concern what items were discussed with another person. Certainly, your questions are far too broad, and it's not within the ambit of your lawsuit.

MR. HOFFMAN: The contract closing?

MR. MURRAY: Your language is ambiguous. The contract signing.

MR. HOFFMAN: It's called the closing.

MR. MURRAY: Closing means when you take title.

Signing the contract -- but if you really feel that our objections are unfounded, may I respectfully suggest that rather than run up five thousand pages of notes, maybe a Judge will help us out.

MR. HOFFMAN: Will you permit me to ask any question regarding what occurred at the contract closing, signing? If you say no, fine, than I can go on with it.

MR. MURRAY: If you want to know if Mr. Duckett's religion or race was mentioned, offer something like that. Anything that relates to the ambit of your lawsuit, I would not object to. Anything else that is mentioned that is not of your concern at this point. That would be my position.

MR. RIBOWSKY: Essentially, that is my position too.

MR. HOFFMAN: Will you allow me to ask any questions regarding any negotiations which took place?

MR. RIBOWSKY: No.

MR. HOFFMAN: At that contract signing?

MR. RIBOWSKY: No, I will permit only

1
2 questions that relate to the circumstances of
3 your lawsuit, which, as you well know, are
4 founded upon the Civil Rights Act.
5 MR. HOFFMAN: Anything regarding any
6 negotiations you will not permit me to ask?
7 MR. RIBOWSKY: That's correct.
8 MR. MURRAY: Off the record.
9 (Discussion off the record.)
10 Note for the record, I would like to state
11 that while I understand the Federal Rules are
12 broader, and they do permit certain questions,
13 they would not permit an endless fishing
14 expedition.
15 MR. HOFFMAN: Will you permit me to ask
16 any questions regarding any negotiations which
17 took place or any disputes regarding the house,
18 if any, at the time of title of closing betwen
19 which occurred around that time?
20 MR. RIBOWSKY: The answer is no, for the
21 same reason.
22 MR. HOFFMAN: Fine.
23 Q Who was present at the title closing?
24 MR. MURRAY: I know he already answered
25 that.

1 MR. HOFFMAN: Title closing?

2 A Well, to the best of my recollection, it

3 is Mr. Ribowsky, myself, my wife, and Mr. Murray, Mrs.

4 Silberman.

5 MR. RIBOWSKY: Title closing?

6 THE WITNESS: That's about it.

7 MR. HOFFMAN: Even though there were three

8 parties there, you will not allow me to ask any

9 questions regarding any negotiations or disputes,

10 if any, which may have arisen during that time?

11 MR. MURRAY: Certainly, the title closing

12 has no way, shape, or form anything to do with

13 this lawsuit.

14 I would object to any questions about that.

15 MR. RIBOWSKY: The objections as to con-

16 versation at the closing stand on much stronger

17 grounds, if anything.

18 MR. HOFFMAN: Just say yes or no.

19 MR. RIBOWSKY: I just said --

20 MR. HOFFMAN: So, in other words, the

21 answer is --

22 MR. RIBOWSKY: No.

23 Q Subsequent to the execution of the contract--

24 MR. RIBOWSKY: Signing.

25

Q (Continuing) -- signing of the contract, what steps did you take to have your old house sold?

MR. RIBOWSKY: Objection.

MR. HOFFMAN: What's the grounds on that?

MR. MURRAY: Nothing to do with the lawsuit.

MR. HOFFMAN: Will you allow me to ask any questions regarding the sale of his old house?

MR. RIBOWSKY: No.

MR. HOFFMAN: Does that include to whom he sold it, the purchase price, and how it was negotiated, and so forth?

MR. RIBOWSKY: That's correct.

MR. HOFFMAN: Off the record.

(Discussion off the record.)

Q Did you attempt to obtain a mortgage for the purchase of your new house?

A Yes.

Q Where did you go, and to whom for that purpose?

A Queens County Savings Bank.

Q Did you go to anybody else?

A Must have gone to several banks, but not very seriously.

Q Did you fill out any applications for a

mortgage?

A Just at Queens County Savings Bank.

Q With whom did you talk to, if anybody?

MR. RIBOWSKY: Objection.

MR. HOFFMAN: On form or substance?

MR. RIBOWSKY: On both.

Q Did you talk to anybody --

MR. RIBOWSKY: I am going to object to this conversation going any further, because once again, it doesn't relate to this lawsuit. If you want to establish whether or not he automatically received the mortgage for the house, I will permit that question to be asked and answered.

Q Prior to contract signing and the time you first went inside the house, did you go into the house again?

MR. RIBOWSKY: What?

Q Prior to the execution of the contract and subsequent to the time you first went into the house with Mrs. Sprecher, did you go into the house again?

A No.

MR. MURRAY: Off the record.

(Discussion off the record.)

Note for the record that I requested to ask a few questions of the witness, and offered to pay for the pages that I would ask, and Mr. Duckett has refused to allow me to do that and wanted me to split the entire exam, and we refuse, and will not ask questions at this time.

I reserve the right at this time that when this examination will be continued, because I believe it's going to be continued in a Court --

MR. HOFFMAN: Unless we lose.

Off the record.

(Discussion off the record.)

MR. MURRAY: We'll reserve the right to ask necessary questions if this examination does continue.

MR. HOFFMAN: Let the record also show that no notice to take a deposition was made by either the Defendant or Mrs. Brickman.

MR. MURRAY: That may be true, but --

MR. HOFFMAN: Go ahead and ask questions.

MR. RIBOWSKY: Off the record.

(Discussion off the record.)

1
2 MR. HOFFMAN: Go ahead.
3 EXAMINATION BY MR. MURRAY:
4 Q What was the purchase price that you paid
5 for the house?
6 A $46,000.00
7 Q Was there any broker involved in this deal?
8 A No.
9 MR. HOFFMAN: For the first or the second
10 house?
11 MR. MURRAY: For the record, I am only
12 interested in this deal. You are interested in
13 the other one.
14 MR. HOFFMAN: What deal?
15 MR. MURRAY: The deal with Mrs. Silberman.
16 EXAMINATION BY MR. HOFFMAN:
17 Q Was there any negotiations which you had
18 regarding the purchase price of $46,000.00?
19 MR. RIBOWSKY: What?
20 Q Did you enter into any negotiations prior
21 to the purchase price being fixed at $46,000.00?
22 MR. RIBOWSKY: Objection.
23 Q Did you receive this notice to take a
24 deposition upon oral examination?
25 MR. RIBOWSKY: Do you remember? This is

a notice dated March 25 of this year?

THE WITNESS: I guess I did.

MR. RIBOWSKY: Do you recall?

Q Have you brought pursuant to this notice any papers, notes, memoranda, or other items requested to be produced today?

A Well, I brought this one thing here.

MR. RIBOWSKY: Do you want to mark this for identification?

MR. HOFFMAN: Yes, thank you.

(Plaintiff's Exhibit 1, a notice dated 3/25/76 is marked for Identification as of this date.)

Q At this time, I ask that you produce pursuant to that notice all papers, notes, memoranda, letters, and documents relating to the negotiations and/or purchase of the house located at 141-01 77th Avenue.

MR. RIBOWSKY: That request is respectfully refused on several grounds, the first being that any papers, et cetera that involve communications between myself and my client are privileged, and there is no indication what other specific items you may be asking for, so that I cannot intelligently decide whether or not they should other-

wise be objected to.

MR. HOFFMAN: Thank you very much.

(Whereupon, the deposition of this witness was concluded at 11:35 a.m.)

Subscribed and sworn to before me this day of 1976.

---oOo---

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CERTIFICATE

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

I, MAUREEN MC CORMICK, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That MENAHEM MENDEL BEER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I FURTHER CERTIFY that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August, 1976.

Maureen McCormick
Reporter

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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GEORGE DUCKETT and :
DELORES DUCKETT,
:
Plaintiffs,
:
-against-
:
EVE SILBERMAN,
:
Defendant.
:
- x

200 West 57th Street
New York, New York

August 12, 1976
11:40 A.M.

Deposition of RAVELLE BRICKMAN,

taken on behalf of the Defendant, pursuant

to Notice Dated March 25, 1976.

MM/ab
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Appearances:

THOMAS HOFFMAN, ESQ.,
Attorney for Plaintiffs
200 West 57th Street
New York, New York 10019

GERALD MURRAY, ESQ.,
Attorney for Defendant
90-61 Sutphin Boulevard
Jamaica, New York 11435

GEORGE DUCKETT,
Also Present

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IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the sealing, filing and certification of the within deposition be and the same are hereby waived; and the Plaintiffs will furnish a copy to said Defendant, without charge.

IT IS FURTHER STIPULATED AND AGREED that the witness may be sworn at the taking of this deposition before any Notary Public of the State of New York or Commissioner of Deeds of the City of New York, and that the witness may read, sign and swear to his testimony when the same is transcribed before any Notary Public of the State of

New York or Commissioner of Deeds of the City of New York, with the same force and effect as if signed and sworn to before a Judge of the above named Court or the Clerk thereof.

IT IS FURTHER STIPULATED AND AGREED that the within testimony may be used if not signed with the same force and effect as if signed, provided it is delivered to Counsel for said Witness for signature thereof.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of questions, be and the same are hereby reserved to the trial of this action.

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R A V E L L E B R I C K M A N, after having been first duly sworn assumed her seat as a witness and testified as follows:

EXAMINATION BY MR. HOFFMAN:

Q What is your name?

A Ravelle Brickman.

Q Where do you reside?

A 4 Washington Square Village, New York, New York 10012.

Q What is your relationship with Eve Silberman?

A I am her daughter.

Q Did you ever live at 141-01 77th Avenue?

A Indeed I did, from 1940 until I left to take up my own residence.

Q Did there come a time when you were advised by Eve Silberman that --

MR. MURRAY: Off the record.

(Discussion off the record.)

Q When did you stop living at those premises?

A I was away at college. When I stopped coming there for vacations?

Q Were you living at that premises or in those premises in 1975?

A No.

Q Did there come a time when your mother indicated to you that she wanted to sell that house?

A Yes.

Q When was that?

A October 1974.

Q Subsequent to that date did she indicate any desire or preference that you handle any aspect of the sale of this house?

A Yes, in December.

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2 Q Of '74?
3 A Yes.
4 Q What did she say to you in that respect?
5 A That she could not -- that it was emotionally
6 too difficult to handle herself, and that at this
7 point, I met with her and Mr. Smetana in the house,
8 the broker, and I then put my mother on the plane
9 to Wisconsin to visit my brother.
10 Q At the time of the conversation with Mr.
11 Smetana, did your mother, Mrs. Silberman, indicate
12 that she wanted you to represent her in the sale of
13 that house?
14 MR. MURRAY: I object to that and direct
15 her not to answer. Why don't you ask her
16 what the sum and substance of the conversation
17 was? You are leading her.
18 MR. HOFFMAN: I can lead.
19 MR. MURRAY: I disagree. I direct the
20 witness not to answer the question as phrased.
21 MR. HOFFMAN: It makes it very difficult;
22 that's basic.
23 MR. MURRAY: I have my job to do.
24 MR. HOFFMAN: I mean you can lead in
25 depositions, just like you can lead in a cross-

1 examination.

2 MR. MURRAY: You have to ask questions, not give answers.

3 Q Were you given any authority, any verbal authority to represent her in the sale of that house?

4 MR. MURRAY: I have to object. I would like you to ask questions, not give her answers to questions.

5 MR. HOFFMAN: I tell you I can't do it the way you want me to do it; I'm sorry.

6 Q Were you ever given authority to represent her in the sale of this house?

7 A Not legally, but in a moral sense.

8 MR. MURRAY: Off the record.

9 (Discussion off the record.)

10 Answer the question as phrased.

11 Q Did she ever tell you verbally that you can represent her in the sale of this house?

12 MR. MURRAY: Objected to as just being asked and answered. She said not legally.

13 Read back her answer.

14 (Whereupon the reporter read back the last answer.)

15 Q Did you ever have a conversation with your

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mother regarding your representing her in the negotiations of the sale of this house?

MR. MURRAY: Note my objection, but I will allow her to answer.

A I said I would help her sell the house.

Q Did she say okay in sum or substance?

MR. MURRAY: Objected to.

Q When did you tell her that you would help her sell the house?

A I discovered in December that she was not capable of doing this herself. I do not mean mentally incapable.

Q When did you tell her? I just want a time now.

A December.

Q 1974?

A Before Christmas.

Q Had she asked you to help her sell the house?

A No.

Q When you said that you would help her in selling the house, did she indicate in anyway that she assented to that?

A Yes.

Q Was this during the same conversation when

Mr. Smetana was present?

MR. MURRAY: Objected to, because Mr. Smetana's conversation was in October of 1974.

MR. HOFFMAN: She said December.

MR. MURRAY: She said October, 1974.

THE WITNESS: I said December.

MR. MURRAY: Off the record.

(Discussion off the record.)

I withdraw the objection.

Q Was this conversation at the meeting where Mr. Smetana was present, the conversation when you said you would help her sell the house, and she had indicated that she would assent to that?

A Yes.

Q During the meeting with Mr. Smetana in December of '74, was there any discussion as to the selling price of that house?

A Yes, Mr. Smetana promised my mother, in my hearing, that he would get her $60,000.00.

Q Did you sign any documents giving Mr. Smetana authority to sell the house as your broker?

A No.

Q Did your mother, to the best of your recollection?

A No.

Q Did you have any conversations with Mr. Smetana as to his fee for attempting to sell this house or for getting a purchaser for this house?

A Yes.

Q What was that discussion?

A It was a percentage, and what he promised my mother was that she was going to get $60,000.00 net, and that he was going to get more than that and the difference would be his. There was a percentage, which I have forgotten.

Q By the way, who contacted Mr. Smetana, the broker? Was it your mother or you?

A My mother telephoned him.

MR. MURRAY: Note my objection to any of these questions unless the witness herself contacted Mr. Smetana.

Q Do you have any information --

A I contacted --

MR. MURRAY: Just a minute. You can only ask her what she did.

Q Do you know who contacted --

MR. MURRAY: Note my objection unless you ask what the witness did.

MR. HOFFMAN: Let me show you. I can get you the case right now.

MR. MURRAY: I'll look at it.

MR. HOFFMAN: I am going to get into hearsay, I admit that.

Off the record.

(Discussion off the record.)

MR. MURRAY: I will allow her to answer over my objection, and both rights will be protected.

MR. HOFFMAN: Fine.

Off the record.

(Discussion off the record.)

Q Do you know who contacted Mr. Smetana?

MR. MURRAY: Note my objection for the record.

MR. HOFFMAN: And your continuing objections to this series of questions?

MR. MURRAY: Right.

A My mother telephoned Mr. Smetana in October, but did not put the house on the market.

MR. MURRAY: Were you present when your mother telephoned Mr. Smetana?

THE WITNESS: No. In December, on learning

that the house was not officially yet on the market, I telephoned Mr. Smetana, and he came over to the house and met with me and my mother, and that was when it officially went on the market.

Q When you telephoned, what did you say to him, and what did he say to you, to the best of your recollection?

A I said I want to sell a house.

Q And what did he say?

A He said he'd be glad to sell the house for me or for my mother. That's his business.

Q Anything else that you recall in sum or substance during that telephone conversation with Mr. Smetana?

A Simply that he indicated over the phone, and again when he came to the house, that because of its prime location on the block where there was a school and safe traffic, and it was semi-detached, and so forth, that he would have no trouble getting $60,000.00 or more.

Q Was there any discussion regarding the condition of the house either during the telephone conversation or the conversation when Mr. Smetana went

to the house?

A No.

Q Were there any discussions, other than the selling price, regarding that house, to the best of your recollection?

A No.

Q Subsequent to that time did you receive, and prior to Mr. Duckett's entering the picture, did you receive any offers for the sale of that house?

A Yes.

Q What offers did you receive?

A I received an offer for $50,000.00. I communicated this to my mother in Wisconsin. She turned it down, and I called up Mr. Smetana back and said see if these people will go higher, and at that point these people called in an appraiser and instead of going higher they went lower.

My mother having turned down the first offer, $50,000.00, then naturally she turned down the second offer of $48,000.00.

Q Subsequent to December of '74 and prior to Mr. Duckett's entering the scene, was the $60,000.00 figure ever reduced?

A I accepted realistically that we weren't

1
2 going to get $60,000.00. I hoped for $55,000.00.
3 Q Did you ever tell Mr. Smetana to reduce the
4 $60,000.00 offer?
5 A To $55,000, yes.
6 Q When was that?
7 A In February.
8 Q Subsequent to February of '75 the figure
9 was $55,000.00, as to what it was being offered for?
10 A Yes.
11 Q Prior to Mr. Duckett's entering the scene
12 and subsequent to February '75 did you ever advise
13 Mr. Smetana that you would refuse an offer of
14 $55,000.00?
15 A No.
16 Q Other than this offer you were telling us
17 about, the $50,000.00 which later became $48,000.00,
18 were there any other offers for that house?
19 A Yes, they were all in the low 40s and they
20 were all rejected.
21 I believe there was one for $47,000.00 that was
22 also rejected.
23 Q By the way, do you know Rabbi Sprecher?
24 A No, I have never met him in my life.
25 Q Do you know whether or not your mother knows

Rabbi Sprecher?

A Yes.

Q In what capacity does she know Rabbi Sprecher?

A A neighbor, not by first names.

Q How far from 141-01 77th Avenue does Rabbi Sprecher live?

A Three doors down.

Q Did you ever have a conversation with Rabbi Sprecher?

A Never.

Q Or his wife?

A Never.

Q When did you first ascertain that Mr. Duckett was interested in purchasing this house?

A Late June.

Q How did you find this out?

A Mr. Smettana called me at my office and told me that he had somebody interested.

Q Between December '74 and June of '75 was there anybody else, other than yourself, who was negotiating and talking to Mr. Smetana regarding the purchase of the house?

A No.

Q Your mother was not involved after December '74?

MR. MURRAY: I object to that; don't answer it.

MR. HOFFMAN: Why?

MR. MURRAY: Because you were telling her. Ask her.

Q Your mother was not negotiating, to the best of your knowledge, with Mr. Smetana subsequent to December of '74?

MR. MURRAY: Objection, and I direct the witness not to answer.

First of all, you don't even know if she knows. Ask a question.

Q Do you know?

MR. MURRAY: Do you know? Ask the question.

Q Put a do you know before that question.

MR. HOFFMAN: Would you read the question back?

(Whereupon the reporter read back the last question.)

Q Do you know whether or not Mrs. Silberman, your mother, was talking with Mr. Smetana or any

prospective purchasers between December of '74 and June of '75 regarding the premises at 141-01 77th Avenue?

MR. MURRAY: Yes or no answer I assume?

MR. HOFFMAN: Yes.

A I don't know.

Q Would it be fair to say that as far as you were concerned you felt that you were not responsible to handle the sale of that house?

MR. MURRAY: Objected to, and I direct the witness not to answer.

Q When Mr. Smetana called you regarding the new prospective purchaser, I believe you stated in June of '75, what was said by you, and what was said to him by you and from him to you, in form and substance?

A He said that someone was interested in the house, that the offer was in the low 40s. He asked whether I would come down in price. I said at this point I would consider it, because the house was becoming a major liability, but I would not come down to 42 or 40.

Q You would come down from 55?

A From the 55. In the course of that con-

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2 versation, I asked Mr. Smetana what type of people
3 these were, in terms of whether they were serious
4 prospective buyers.
5 Mr. Smetena described them. I thought they
6 sounded like very nice people, and I told him to
7 negotiate.
8 Q When you said you told him to negoti
9 A I told him to try to bring the price
10 I was hoping that we could settle at something like
11 $48,000.00, 49,000.00. I was starting from a position
12 of 55.
13 Q Between December and June of '75 was your
14 mother still in Wisconsin?
15 A No, she returned to New York, to an apart-
16 ment in March 1975.
17 Q Did you ask Mr. Smetana during that con-
18 versation whether the prospective purchasers were
19 Jewish?
20 A No.
21 Q Did you ask him whether or not they were
22 black?
23 A No.
24 Q Was the question of race or religion
25 alluded to in that conversation?

A I have now told you that it was.

Q How was it alluded to? Who raised it?

A The information was volunteered by Mr. Smetana.

Q What was the information?

A That these people were not Jewish, that they were not black, that they were not white. I said that's irrelevant. Are they both employed, do they have children, how old are they about?

Q Did he say, when Mr. Smetana mentioned that, did he say to you that these people were black and not Jewish --

MR. MURRAY: I object the witness not to answer.

Q How did he raise that?

MR. MURRAY: You mean what did he say?

Q What exactly did he say?

What else did he say regarding that?

MR. MURRAY: About the purchasers, you mean?

A He described them as lovely people, very attractive.

Q Were any of the other prospective purchasers prior to June of '75 non Jewish?

MR. MURRAY: Note my objection, but I'll

1
2 allow her to answer over my objection.
3 A I don't know. The only one I had any
4 biographical information was a man who made the 50
5 and 48.
6 Q Was he Jewish?
7 A He was Jewish, he was a school psychologist,
8 he had three children.
9 Q He was Jewish?
10 A Yes, but I asked all the same questions
11 about him that I asked about Mr. Duckett.
12 Q Did you ask on the first purchaser whether
13 or not he was Jewish?
14 A No.
15 Q Did you ask whether or not he was white?
16 A No.
17 May I interject?
18 MR. MURRAY: Off the record.
19 (Discussion off the record.)
20 Q When did Mr. Smetana get back to you after
21 that initial conversation?
22 MR. MURRAY: If he did get back to her.
23 Q Did he get back to you after that initial
24 telephone conversation?
25 A Yes, but a long time afterward.

Q When was that?

A I believe late July.

Q Do you know whether or not between June of '75 and July of '75 Mr. Smetana was contacting either your mother or any other members of your family regarding the purchase of this house?

MR. MURRAY: I object to that.

MR. HOFFMAN: Why? Does she know.

MR. MURRAY: You are asking a general question. First ask about --

Note my objection on the record; I will allow her to answer over my objection if she knows.

THE WITNESS: I don't.

Q Did either your mother or any other member of your family contact you during June and July of '75 to indicate that the original offer by Mr. Duckett had been raised?

A I contacted them in August.

Q Prior to August did you have any information that Mr. Duckett's original offer had been raised?

A No.

Q Between July and August of '75 did you receive any information from Mr. Smetana that there

1
2 were other prospective purchasers, other than Mr.
3 Duckett?
4 A No.
5 Q Regarding the sale of this house, would it
6 be fair to say that the next thing you did after the
7 June telephone conversation with Mr. Smetana was
8 contact your family in August?
9 A Yes.
10 Q Who did you contact?
11 A My mother and my brother. My mother had
12 once again gone to Wisconsin.
13 Q To the best of your recollection, first,
14 who did you specifically talk to, your mother or your
15 brother?
16 MR. MURRAY: She said mother and brother.
17 A Both.
18 Q To the best of your recollection what did
19 you say to your mother, and what did she say to you
20 during that August telephone conversation?
21 A That Mr. Duckett, according to Mr. Smetana,
22 and I had never spoken to Mr. Duckett.
23 According to Mr. Smetana, he had come up to
24 $45,000.00 as is. By this point, we were all aware
25 that the house was in much worse condition than we had

originally thought. It was Mr. Smetana's advice that we should settle at this price as is, and I communicated this to my brother and mother, and the decision was made.

Q In other words, then you talked to Mr. Smetana prior to calling Wisconsin, is that correct?

A Mr. Smetana communicated an offer to me. I said I will communicate it to my mother and get back to you.

Q When did Mr.Smetana in relationship to your telephone conversation in August, when did he communicate that new offer to you?

A In August. I don't know the date.

Q Couple of days before, or weeks before?

In other words, Mr. Smetana communicated to you that Mr. Duckett had raised his offer to $45,000.00, is that correct?

A That is it was absolutely as is; not a screw to be changed.

Q Is that what he said?

A Yes.

Q When did he communicate that offer to you?

A In August.

Q Early August, middle August, or the end of

August, to the best of your recollection?

A That's hard to reconstruct. The same day I communicated it to my mother and brother.

Q After this conversation in August with your mother and brother in Wisconsin, what did you do then, if anything,about the sale of this house?

A Say that again?

Q After the conversation, immediately after the conversation with your mother and brother in August, what, if anything, did you do in relationship to the sale of this house?

A I told Mr. Smetana that so far as I was concerned he could go ahead, and he spoke to -- directly to my brother in Wisconsin.

Q So you called Mr. Smetana up?

A So did my brother.

Q Then what occurred after you called Mr. Smetana up and told him to go ahead, is that correct?

What occurred then regarding the sale of this house?

A From that point on I was no longer involved.

Q Did you contact anybody? Did you contact Mr. Murray at any point?

A No.

1 MR. MURRAY: Note my objection because she
2 was no longer involved.
3 Q In that conversation with Mr. Smetana when
4 you said go ahead, did you --
5 MR. MURRAY: She said as far as she was
6 concerned she didn't say go ahead.
7 MR. HOFFMAN: Whatever the record shows.
8 Q What else was said, to the best of your
9 recollection, if anything?
10 A Mr. Smetana said he had wonderful news,
11 that the deal had been reached. I agreed that it was
12 wonderful news, and I asked him to do everything
13 possible so long as my mother and brother were in
14 agreement to finish off the whole thing and exchange
15 contracts by September 1st, if that would be -- I
16 was in a great hurry to be finished.
17 Q Was his commission discussed?
18 A Yes.
19 Q What was said by you and by him regarding
20 the commission?
21 A He said it was to be $2,000.00.
22 Q Prior to that time was there any discussion
23 by you with Mr. Smetana regarding his commission,
24 other than the December conversation?
25

A No.

Q In that conversation when he said it would be $2,000.00 did he just tell you that's what it would be, or did you negotiate that?

A No, he told me that's what it would be. He implied that it was less than the usual amount.

Q Did he indicate at all during that conversation or at any time prior to that conversation the problem with a leak in the house?

A Yes. We learned about that when the first buyer's appraiser went down.

Q Did you indicate to him at all whether or not you would have that leak repaired?

MR. MURRAY: At what point in time?

MR. HOFFMAN: Between December '74 and August '75.

MR. MURRAY: I object to that. It's too broad, because we are talking about different price ranges.

I object to the question and direct her not to answer it.

Q In June of '75 did you have any discussion with Mr. Smetana, to the best of your recollection, regarding repairing the leak in that house?

A No.

MR. MURRAY: Also note my objection because the witness has testified that Mr. Smetana said "there is not a screw to be changed".

Q Did you have any conversation with Mr. Smetana prior to August '75 regarding your willingness to repair the leak?

MR. MURRAY: Objected to as too broad.

Q In April of '75?

A No.

Q In January of '75?

MR. MURRAY: Off the record.

(Discussion off the record.)

Q Prior to August of '75?

A When the school psychologist lowered his --

Q Prior to August of 75 did you have a conversation with Mr. Smetana regarding your willingness to repair the leak?

A Yes.

Q When did that conversation occur?

A In March of '75 Mr. Smetana advised me to repair the leak and other damages in the house to have it properly cleaned and painted throughout, and it was his opinion that if this were done we would have no

difficulty getting that $60,000.00 price.

My mother, however, refused, and it was her house and her decision to make.

Q Do you recall having any conversations other than that conversation regarding that leak in the house prior to August of '75?

A No.

Q Prior to August of '75, other than Mr. Smetana, was anybody representing your mother and yourself to sell that house as a broker?

MR. MURRAY: To her knowledge?

MR. HOFFMAN: To her knowledge.

A No.

Q Other than using Mr. Smetana did you do anything else in that attempt to sell that house?

A Yes. Not me, my mother did.

Q What did she do?

A This is hearsay; I didn't see her do it, but she said she telephoned people in the community, that she telephoned the school, the synagogue, asking people to put notices up on the walls. Whether she really did that or not I don't know.

Q Prior to August of '75 did you receive any offers which came through a Rabbi Sprecher?

A No.

Q Subsequent to August of '75 did you have any further conversations with Mr. Smetana regarding the sale of that house?

MR. MURRAY: I object to it and direct the witness not to answer because I believe she testified she was out of the picture at that time.

I will allow her to answer over my objection, but she already stated she hadn't.

Q Did you have any conversations with Mr. Smetana subsequent to August of '75 to that last conversation you previously testified to?

A No.

Q Did you have any discussions with your mother?

MR. MURRAY: As to what?

Q Subsequent to having called Mr. Smetana and said in form or substance that you would go ahead and take a $45,000.00 purchase price?

A No.

MR. MURRAY: I assume you are asking about the sale of the house?

MR. HOFFMAN: About the sale of the house.

MR. MURRAY: That wasn't in there.

Off the record.

(Discussion off the record.)

Q Did you ascertain that the deal with Mr. Duckett for $45,000.00 as is was not going through?

A I learned, I believe, from Mr. Murray that conditions were being raised regarding repairs which would effectively have lowered the price of the house.

Q When did you contact Mr. Murray?

A No, I believe Mr. Murray contacted me.

Q When did he contact you?

A September.

Q Exactly what did he say?

A That all kinds of conditions were being raised about repairing things, and that I was annoyed because the agreement was to sell the house as is.

Q What were the conditions which were being raised? What was your understanding of the conditions which were being raised?

A Major repairs.

Q What major repairs?

A Appliances, something was said about the plumbing. There was some condition about guarantying the condition of the house from the date of the contract

to the move in, which I found very alarming, because the house had stood empty for a long time. It was deteriorating very rapidly, and I felt that I had settled, and my mother had settled at an extremely low and fair price, and that we should make no further concessions.

Q Did you tell that to Mr. Murray?

A Yes.

Q Subsequent to that time did Mr. Murray advise you that any conditions were being withdrawn ?

A No.

Q Subsequent to that conversation did you have any further discussions with Mr. Murray?

MR. MURRAY: Up until what point?

MR. HOFFMAN: In September.

MR. MURRAY: 1975?

A I learned from Mr. Murray at some point in September that some other people were interested in buying the house for a thousand dollars more and absolutely as is with no conditions.

Q Were there any conditions that you knew of regarding the working conditions of the appliances?

MR. MURRAY: I object to that and direct the witness not to answer.

Q Did Mr. Murray at any time advise you subsequent in September of '75 that all conditions were withdrawn and all conditions were withdrawn by Mr. Duckett?

MR. MURRAY: Objected to as being asked and answered.

Q Did he advise you in October of '75 that all conditions were being withdrawn by Mr. Duckett?

A No, he simply advised me that the house was being sold to people that were making a better and simpler offer.

Q Subsequent to August of '75 were there any other purchasers making an offer for this house?

A Yes, but the offers that I heard of were too low.

Q Was this between the August conversation with Mr. Smetana saying that there was a deal for $45,000.00, subsequent to that time, right?

MR. MURRAY: Read that question back.

Q Was it subsequent to the time that you were getting more offers when you had called Mr. Smetana to tell him that you would accept the $45,000.00 offer?

A I received one offer over the telephone

from a private purchaser.

Q Who is that?

A I have forgotten the man's name.

Q Do you know through whom this purchaser came to you?

A I assume that he was through this Sprecher, but I have no way of knowing that.

Q Do you have any way of ascertaining this man's name? Do you have any papers you may have written his name on?

A I rejected his offer.

Q What was his offer?

A I think it was $42,000.00.

Q When he called you did he mention the fact that Mr. Duckett was black?

A No.

Q Did he mention the fact that Mr. Duckett was not Jewish?

A No.

Q Did you ascertain whether or not this man who called you was either Jewish or white?

A No. I ended the conversation by telling him to call up Mr. Smetana; I was not an agent for the house.

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2 Q Do you recall any other offers which were
3 conveyed to you after your conversation with Mr.
4 Smetana during August of '75?
5 MR. MURRAY: If there were any.
6 A No.
7 Q Do you recall any other offers which were
8 communicated by prospective purchasers after your
9 conversation with Mr. Smetana and prior to Mr. Murray
10 advising that conditions were being added by Mr.
11 Duckett?
12 MR. MURRAY: You mean the conversation in
13 August about the offer of $45,000.00?
14 MR. HOFFMAN: Right.
15 A I heard about the Beers sometime in Sep-
16 tember, but I did not think much about it.
17 Q After August of '75 did you advise Mr.
18 Smetana to try to get new purchasers?
19 A No.
20 Q Did you authorize or advise anybody else
21 to try to get new purchasers?
22 A No.
23 Q In June of '75 did you tell Mr. Smetana
24 to try to delay the deal to see whether a new offer
25 would come in?

A In August my brother asked Mr. Smetana to hold up on Mr. Duckett's offer for ten days to see if any better offer could be found, and if no better offer had been found, he would sell the house to Mr. Duckett at his price in ten days.

Q Did you have any conversations from June '75 and October '75 with your mother or your brother regarding Mr. Duckett's race?

A Yes.

Q When was that conversation?

A In August.

Q What, to the best of your recollection, was said to you and said by you to the them?

A My brother and I agreed that it would be a very nice thing for Kew Gardens Hills to have a black family.

Q Anything else?

A That we were in agreement.

Q Did you have a discussion with Mr. Murray regarding Mr. Duckett's race or religion?

A No.

Q Did you get any information from either your family or any other source that neighbors were complaining that Mr. Duckett was purchasing that house?

A No.

Q Do you know a Mr. Rosenberg?

A No.

Q Did you have any information between June and October of '75 that Mr. Duckett's race or religion had been raised by some individuals in that area?

MR. MURRAY: Please read the last question.

(Whereupon the reporter read the last question.)

MR. MURRAY: Objected to.

A No.

MR. MURRAY: I direct her not to answer.

THE WITNESS: No objections were communicated to me.

Q Was the issue that that question had been raised communicated to you?

MR. MURRAY: I object and direct her not to answer.

Q When did you ascertain that the Beers were willing to enter into a contract for the purchase of the house?

MR. MURRAY: Objected to.

MR. HOFFMAN: Why?

Q Did you ascertain in --

A I didn't. I was out of the picture.

Q I believe you mentioned before that you understood that the Beers were wanting to buy that house?

A I understood from Mr. Murray; the decision was not mine.

Q Did Mr. Murray call you again after he advised you that the Beers were now in the picture?

A To the best of my recollection he delt exclusively with my mother.

Q Subsequent to the conversation with Mr. Murray regarding the conditions having been raised --

MR. MURRAY: Read that question back.

(Whereupon the reporter read back the last question.)

Q (Continuing) -- by Mr. Duckett, did you have any further conversations with Mr. Murray regarding the conditions which were raised and/or Mr. Duckett purchasing that house?

A We had several conversations on that subject.

Q What do you recall was said during those conversations, and if you can try to pinpoint the time period.

A I can't.

Q What do you recall was said in those conversations?

A I think I have already said that essentially that these conditions would, in effect, definitely lower the price, and that the condition regarding the condition of the house in the interveining period was an unusual one.

Q Do you recall whether or not this dicussion took place subsequent to the middle of September '75?

A No, I don't remember now.

Q Did you tell Mr. Murray to see whether or not the purchasers would withdraw those conditions?

MR. MURRAY: Objected to and direct the witness not to answer.

MR. HOFFMAN: On what grounds?

MR. MURRAY: She's already told you the sum and substance of the conversation. If you are not happy with her answer, but I direct her not to answer it.

She's told you what happened and what took place, and that's the conversation.

MR. HOFFMAN: I don't know about that.

I can see the problem. I wouldn't want her

to answer that either.

MR. MURRAY: She has answered it quite clearly.

Off the record.

(Discussion off the record.)

Q Was there any subsequent conversation after the initial conversation with Mr. Murray regarding the conditions which were raised?

MR. MURRAY: Objected to and I direct the witness not to answer.

MR. HOFFMAN: Can I finish, so at least the Judge knows the question?

Q When Mr. Murray raised this question did you have any conversation with him regarding either negotiating on those conditions or telling the purchasers either to take it -- in other words, did you have any discussions regarding what should be communicated back to Mr. Duckett?

MR. MURRAY: Note my objection and I direct the witness not to answer.

Q I believe you stated that you had several conversations with Mr. Murray in September, right?

MR. MURRAY: Note my objection as being asked and answered, and I direct the witness not

1
2 to answer.
3 Q After the first conversation, to the best
4 of your ability, do you recall how many conversations
5 you had? Is it three or four?
6 A I believe two.
7 Q So three all together, in September --
8 MR. MURRAY: She just said two.
9 Q Two afterwards, or two including --
10 A Two.
11 Q Two all together?
12 MR. MURRAY: This examination goes on and
13 on with the same things being raised.
14 MR. HOFFMAN: Because you keep interrupting
15 every time.
16 MR. MURRAY: Maybe if you would ask
17 questions properly I wouldn't have to.
18 Q What was the total number of conversations
19 you had with Mr. Murray in September of '75?
20 MR. MURRAY: Objected to and I direct the
21 witness not to answer.
22 Q Was it two?
23 MR. MURRAY: Objection, and I direct the
24 witness not to answer.
25 Q How long after the first conversation with

1
2 Mr. Murray regarding the conditions which were raised
3 did you talk with Mr. Murray again?
4 MR. MURRAY: I believe the witness has
5 indicated she couldn't remember the date.
6 Q How long after to the best of your reco-
7 llection, days or weeks?
8 MR. MURRAY: If she can estimate it, fine.
9 MR. HOFFMAN: Of course, only if you can.
10 Please, you're getting excited, and you're
11 screwing this whole thing up, and delaying every-
12 thing.
13 Q How long after that first conversation do
14 you recall you talked with Mr. Murray again, to the
15 best of your recollection? Days or weeks, or months?
16 A To the best of my recollection, one week.
17 Q To the best of your recollection what was
18 said by you to Mr. Murray and what did Mr. Murray say
19 to you? The second conversation --
20 MR. MURRAY: Objection. She gave you
21 the sum and substance of all conversations
22 several times during the deposition.
23 MR. HOFFMAN: She didn't indicate --
24 MR. MURRAY: The transcript will speak for
25 itself.

Do you have any other questions? I think you have covered it.

MR. HOFFMAN: I'll tell you when I'm finished.

MR. MURRAY: Off the record.

(Discussion off the record.)

Q Did you at any point accept the offer of the Beers for the $46,000.00 purchase price?

MR. MURRAY: Objected to as being asked and answered.

A No.

Q Did you have a conversation with your mother or your brother regarding the Beers purchasing that house?

A No.

Q Did you have a conversation with Mr. Smetana regarding the Beers purchasing that house?

A No.

Q Subsequent to the second conversation with Mr. Murray in September did you have a conversation with Mr. Murray regarding the purchase by the Beers of that house?

A Yes.

Q When did that conversation take place?

A Something like October 2.

Q To the best of your recollection what did you tell Mr.Murray and what did he tell you during that conversation?

A He told me that my mother had returned from Wisconsin, which I knew, and that she was directly dealing with him, and that a better offer had been received, and he was selling, conducting the sale to people who made the better offer.

Q During that conversation on or about October 2, did Mr. Murray indicate to you that conditions which Mr. Duckett had raised were withdrawn?

A He indicated only that there was a better offer, and that my mother had decided to accept it.

MR. MURRAY: Off the record.

(Discussion off the record.)

Q During that October 1975 conversation, was the question of Mr. Duckett's race or religion raised?

A No.

Q Do you recollect anything else which was said during that conversation on October 2?

MR. MURRAY: Concerning the sale of the house?

MR. HOFFMAN: With Mr. Murray. Anything.

1
2 MR. MURRAY: Objected to, and I direct her
3 not to answer.
4 Q Concerning the sale of the house.
5 A I reiterated my desire to have the house
6 sold instantly, and Mr. Murray reiterated the fact
7 that he was doing the best he could to insure that
8 it would happen.
9 Q Subsequent to October 2, '75 did you have
10 any further discussions with Mr. Murray regarding the
11 sale of this house?
12 A No.
13 MR. MURRAY: I object to it as being too
14 broad.
15 Q In October of '75 did you have any further
16 discussions with Mr. Murray regarding the sale of this
17 house?
18 A I received a subpoena in the mail. On
19 receiving it I called up Mr. Murray.
20 MR. MURRAY: Off the record.
21 (Discussion off the record.)
22 THE WITNESS: Not until receiving a subpoena
23 in the mail.
24 Q Prior to receiving that subpoena, did you
25 have any discussions with your mother or brother re-

garding the sale of that house?

A Only regarding things like mortgages.

Q What was the discussion relating to the mortgage?

A That because of a pending court case, the Beers could not get a mortgage from the bank, and they, therefore, proposed to get a mortgage from my mother, which they would pay her in monthly installments, and I advised my mother on the basis of advice from her divorce lawyer that that was, in fact, preferable to getting a large lump sum.

MR. MURRAY: Off the record.

(Discussion off the record.)

Q Do you recall any other discussions relating to the sale of that house prior to your receiving the summons, the subpoena?

MR. MURRAY: Off the record.

(Discussion off the record.)

Q What subpoena?

A The subpoena to come before Judge Platt.

Q I didn't serve her with a subpoena.

A I got one in the mail.

MR. HOFFMAN: Off the record.

(Discussion off the record.)

1

2 Q Prior to receiving that subpoena or summons,
3 did you have any other discussions with your mother
4 or your brother regarding the sale of that house,
5 other than the mortgage problem?
6 MR. MURRAY: Didn't you subpoena her
7 mother?
8 Off the record.
9 (Discussion off the record.)
10 A No.
11 Q Did you have a discussion with Mr. Smetana
12 in October of '75?
13 MR. MURRAY: I object to it and direct her
14 not to answer.
15 Q Regarding the sale of that house?
16 MR. MURRAY: It's been asked and answered.
17 Q Subsequent to, after August you never had
18 a conversation --
19 MR. MURRAY: She answered that.
20 Q Did you ever give Rabbi Sprecher the keys
21 to the house?
22 MR. MURRAY: I object to it as being asked
23 and answered, but I'll let her answer again.
24 A No.
25 Q Prior to receiving this summons in October

of '75, or subpoena, when did you first learn, if you did, that Mr. Duckett was considering legal action?

MR. MURRAY: Wait a minute. Off the record.

(Discussion off the record.)

THE WITNESS: I now recollect, as I did not before, that it was my mother who received this document, and I learned about it from her and Mr. Murray simultaneously.

Q Prior to that time did you have any information regarding Mr. Duckett planning to institute legal action?

A No.

MR. HOFFMAN: Mark that as Exhibit 2.

(Plaintiff's Exhibit 2, notice dated March 25, 1976, is marked for Identification as of this date.)

Q Pursuant to Notice to Take Deposition, have you produced any papers, notes, memoranda, memos, or documents relating to the negotiations or pursuant--

MR. MURRAY: Objected to. Ask her if she has any.

Q Do you have any papers, notes, memoranda, letters, or documents relating to the negotiations or

purchase of the house located at 141-01 77th Avenue?

A No.

MR. HOFFMAN: I have no further questions.

(Whereupon, at 1:05 p.m., this deposition was concluded.)

Subscribed and sworn to before me

this day of 1976.

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INDEX OF EXHIBITS

Plaintiff's for Iden.	Description	Page
2	notice dated 3/25/76	46

---oOo---

1
2
3 CERTIFICATE
4
5 STATE OF NEW YORK)
: ss:
6 COUNTY OF NEW YORK)
7 I, MAUREEN MC CORMICK, a Shorthand
8 Reporter and Notary Public within and for
9 the State of New York, do hereby certify:
10 That RAVELLE BRICKMAN, the witness
11 whose deposition is hereinbefore set forth,
12 was duly sworn by me and that such deposition
13 is a true record of the testimony given by
14 such witness.
15 I FURTHER CERTIFY that I am not related
16 to any of the parties to this action by blood
17 or marriage; and that I am in no way interested
18 in the outcome of this matter.
19 IN WITNESS WHEREOF, I have hereunto set
20 my hand this 26th day of August, 1976.
21
22 Maureen McCormick
Reporter
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

GEORGE DUCKETT and DELORES DUCKETT,

Plaintiffs,

- against -

EVE SILBERMAN,

Defendant.

- -X

75 CIV 1749

90-61 Sutphin Boulevard
Jamaica, New York

October 11, 1976
10:00 A.M.

Deposition of RABBI BENJAMIN G. SPRECHER, a Witness, taken by the Plaintiffs, pursuant to deposition dated August 31, 1976.

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The Plaintiff
43-57 Union Street
Flushing, New York 11355

oOo

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized

to administer an oath, with the same force and effect as if signed and sworn to before the Court.

IT IS FURTHER STIPULATED AND AGREED that a copy of the within deposition shall be furnished to the witness, Rabbi Benjamin G. Sprecher, without charge.

oOo

MR. MURRAY: I have read to Rabbi Sprecher from another deposition the usual stipulation form, and he has decided that he does not want to go along with it. He wants to read and sign the transcript.

For the record, Rabbi Sprecher is appearing here today and he is not represented by an attorney. I have advised him that I do not represent him and I have also advised him that Mr. Hoffman does not represent him.

Rabbi Sprecher, you have a right to a postponement if you wish to get your own attorney.

RABBI SPRECHER: I will go on with the examination.

2 B E N J A M I N G. S P R E C H E R, affirmed as
3 follows: "I affirm to tell the truth to every
4 statement that I intend to make to the ques-
5 tions that are asked of me, and I am fully
6 aware of the law of perjury."
7 EXAMINATION BY MR. HOFFMAN:
8 Q Will you state your name and address?
9 A Benjamin Gedal Sprecher, 138-49 77th
10 Avenue, Flushing, New York 11367.
11 Q How long have you resided at this address?
12 A Approximately six years.
13 Q Where did you reside prior to that time?
14 A 138th Street; the exact house number I
15 do not know. It was on Jewel Avenue and 138th Street.
16 Q How long did you reside at that address?
17 A Approximately seven years.
18 Q Now, you are an ordained rabbi; is that
19 correct?
20 A That's correct, but not a practicing rabbi.
21 Q So, you do not lead a congregation?
22 A I do not.
23 Q What is your present occupation?
24 A At this point I object and I want to know
25 for what purpose.

Q It is just generally asked to find something out about the witness.

A My title is Associate Professor of Business and Economics and Coordinator of Veterans Affairs at Bloodfield, New Jersey.

Q How long have you worked there?

A Approximately a year and a half.

Q What did you do prior to that time?

A I taught at Bernard Baruch.

Q Was that economics?

A Yes. Prior to that I taught at Trenton State College, and prior to that at Dowling College, what was Adelphi, in Suffolk.

I will save you a history of sixteen years.

Q Now, for the record, approximately how far away is your present residence from 141-01 77th Avenue?

A Four houses; if you count attached town houses as houses.

Q How long did you know Mrs. Silberman who lived at that residence?

RABBI SPRECHER: Off the record.

(Discussion was held.)

A For the first four years of my residence

2 I knew her to say hello in passing, but when she got
3 sick and she could not do certain things herself, she
4 asked my wife or myself to help her. So, we knew her
5 a little better at that particular point.
6 She felt very thankful to my wife and my-
7 self for helping her.
8 Q Do you recall in that aspect when this
9 relationship began?
10 A No.
11 Q Or, when she became sick?
12 A No, I do not recall. I know it was not
13 in the first four years.
14 Q But, it certainly was before she moved
15 out of her house?
16 A Obviously.
17 Q How long prior to the time that she moved
18 out of her house was it?
19 A I would not know exactly how long it was.
20 In other words, I would now know because when somebody
21 goes and asks for my help I generally give the help,
22 and therefore I wouldn't know the exact time or exactly
23 when, but for the first four years of my residence this
24 did not occur.
25 It could have been about a year or a half

Q Could you tell us about how long the second aspect of the relationship lasted?

A We have gone through that, and I told you that I cannot tell you.

It was not a social relationship; it was the type of relationship where someone asked me to help in one way or another.

When a neighbor next door to me asks for my help, I don't know whether it would be the beginning of a relationship.

Q Would it have been weeks or a year?

A It might have been a year, but it would not be weeks.

Q Did you know Mrs. Silberman's daughter?

A No.

Q Did you know her brother?

A No.

Q Did you know a Menahem Mendel Beer?

A Yes.

Q How long did you know Dr. Beer?

A About fourteen years, maybe less.

Q Could you describe the nature of your relationship with Dr. Beer?

A He married a friend of my wife's.

Q Could you describe the extent of your relationship?

A Exactly the extent of the relationship was that he married a friend of my wife's.

Q Did you socialize together?

A I might have dropped over his house once one year. I am not a great socializer. That is it exactly, and this is the extent of my relationship.

I knew him and if there was anything that he needed with regards to economics, he would call me up.

The best way of describing it would be that she was a friend of my wife, and because of the fact that he married the friend of my wife I knew him.

Q Did he come and visit your house?

A Obviously in the same type of manner. He came a few times; I would say, like he came on Sunooth.

Q Did there come a time when you ascertained that the Silberman house was up for sale?

A Yes.

Q When was that?

A I really would not be able to tell you. I would say this much that it was early in the stage that she mentioned it to my wife that she intended to sell it.

A (continuing) Then, to give you a general idea, there were a few people who went to look at the house. In fact, one was ready to pay $58,000 or $59,000, and that person stopped by my house, on the outside of the house, and asked me about the house; and, a few other religious people. When I was out during the day I occasionally saw the people come to look at the house, and one of them even looked at my house on the outside.

Q My question was, in relationship to September of 1975, when did you first ascertain that the Silberman house was being put up for sale?

A I ascertained that the house was sold and then I had ascertained that from the fact that ...

Q I did not ask you that.

MR. MURPHY: Do not interfere with the witness' answer. The answer may be pertinent.

A (continuing) I had ascertained that the house was sold; I had heard from someone on the block that the house was sold and then I had heard that it was not sold, that the buyer at this point was backing down.

Then, about this time, somewhere in September or October, I don't know the date, I heard that the

sale had not gone through; that the buyer had backed down or there was a dispute on the thing, and then I heard that the price had dropped significantly.

So, I knew that Dr. Beer was looking for a house in this lower price range, and I called him up and I told him that there was a house available on my block within his price range and one that he was looking for.

Q When did you first ascertain, prior to September of 1975, that the house was put up for sale; that Mrs. Silberman intended to sell her house?

A To me it was not that important a fact because there were houses being put up for sale on my block several times.

Q Was it weeks, months or years?

A I would say months probably, at least months.

Q Did there come a time when you knew that the Silberman house was vacant?

A Yes.

Q At the time that the house was vacant, did you know at that time that the house was up for sale?

A I couldn't tell you that because I didn't know at that time if the house was sold or if the house

was up for sale. I would not be able to tell you that.

Q Do you have any recollection when early in 1975, you knew that the house was being put up for sale?

A I couldn't have any other recollection. I have given you all of the recollection that I have.

Q What was your understanding as to what the house was being sold for initially?

A Again, my understanding initially was for about $57,000 or $58,000 or $59,000 or $60,000; somewhere in that area.

I remember again that there was some talk of it or even a little card put up someplace which said "For Sale," and that was about it.

I don't remember the exact time, but that was the price range. The only reason I remember that is because the houses have been going up in price on my block; so, every time that somebody purchased a house he paid more.

Q Now, when did you ascertain that the price had been reduced from the $57,000 range.

A At the time that I had heard that the sale had not gone through.

Q Which sale are you talking about; do you

know?

A I have no idea right now, but if you want hindsight ...

MR. MURRAY: If the witness is speculating, note my objection.

A (continuing) What I am going to state is purely speculation on my part here. This would be only hindsight.

MR. MURRAY: Note my objection, if it is to be used asfar as the Defendant, I object in view of the fact that the witness has said it is speculation.

A (continuing) Asfar as the prior person, I am not quite sure of that either.

Q When did you ascertain that Dr. Beer was interested in purchasing a house?

A For the last five years, because when he came to my house he looked at my house and he liked the size of my house, and considering the fact with the number of his children and that his wife likes my wife, he always wanted to move to a larger house.

As a matter of fact, I remember when he purchased his other house that he purchased it on the basis that they wanted later to move to another

house.

Q Now, did you refer him to any other houses which you knew were vacant, other than Mrs. Silberman's house?

MR. MURRAY: Note my objection.

A Note my objection to the fact that I don't consider myself in the real estate business, but I will state when there were other houses for sale on my block, and there were other houses for sale, whenever I would mention that there were houses on my block for sale there was one specific point about these houses which I think it should be clear -- that these houses were significantly houses in a price in the fifties and I do not and did not in some way get hold of these houses, I don't follow listings of houses, and I don't follow the houses in The New York Times.

Q Did you mention to Dr. Beer that there was another house available other than the Silberman house?

MR. MURRAY: Note my objection, because the witness has answered as best as he can.

A I note his objection. Asfar as I am concerned, let me state, if you want me to go through the whole thing again, I would say in all probability

that if and when I would have met the Beers I would have mentioned to them whenever there was a house for sale on my block or to anybody else. I would have mentioned it to a friend of mine, one which I knew wanted a house.

Now, it was not in the case of the Beers, as he would not go for the price range which was in the high fifties.

Q Who had indicated to you that the price range was in the high fifties and when?

A My wife may have indicated it to me. This was something which came from just knowledge of what she had heard.

Q Did you ever talk to a Peter Smetana?

A Yes.

Q Was that in regards to the purchase or sale of a house?

A Certainly.

Q Was that your house?

A Yes.

Q Other than those conversations regarding the purchase of your house, did you ever have a conversation with Mr. Smetana subsequent to this time?

A Yes. I met Mr. Smetana manytimes at that

time in the area and we were always friendly, saying "Hello, and, How are you?", etc., etc., and because I thought that he did a good thing getting my house for me.

Q Other than the social hellos, did you talk to Mr. Smetana during the Summer of 1975?

A Probably because I think that we talked about economics. He was interested in the defluctuation of the dollar value.

Q Will you listen to the question. Did you talk to Mr. Smetana during the Summer of 1975?

A Yes.

Q Did you talk to Mr. Smetana during the Fall of 1975?

A I would not be able to tell you that.

Q Did you have any conversation with Mr. Smetana regarding the Silberman property?

RABBI SPRECHER: Off the record.

(Discussion was held.)

A What I had ascertained from Mr. Smetana was that a client was selling a house on the block, but I knew that he was showing the house to certain people.

Q Did you know any of the other brokers or salesmen who worked at Teitelbaum Realty?

A Let me back off. Asfar as I remember, his wife worked for Teitelbaum; Mrs. Teitelbaum worked for Mr. Teitelbaum.

Q Did you know Mr. Teitelbaum also?

A To the same extent; when I went to purchase my house. I would say "Hello," but I would not recognize him on the street now.

Q You said before, and correct me if I am wrong, that you called up Dr. Beer to tell him that the Silberman house was up for sale and that the price range was within the range that he could afford.

A I will correct you. We will let the record stand the way you stated it, but I don't know whether it was myself or my wife.

If the record indicates that it was me, then it was me.

Q So, you do not recall whether you made the phone call or your wife?

MR. MURRAY: You mean the call to Dr. Beer?

MR. HOFFMAN: Yes.

Q Now, do you recall whether it was you who made the phone call, or, whether it was your wife who made the phone call to Dr. Beer?

A I do not recall.

Q Do you recall either from what your wife told you or from what your own recollection is, what Dr. Beer said?

A Absolutely not.

Q After that first conversation when you told Dr. Beer that there was a house available, do you recall having any other conversation with Dr. Beer?

MR. MURRAY: Note my objection, because he indicated that it was either his wife or he.

A There was a conversation of my showing him the house from the outside. I don't know whether he came over to look at the house from the outside, and I showed him the house from the outside.

Q Now, during this period of time, did you communicate with Mrs. Silberman?

A Yes.

Q That you had a possible purchaser for her house?

A Not quite on that point.

RABBI SPRECHER: Off the record.

(Discussion was held.)

A (continuing) Mrs. Silberman had a piano to

2 sell which my wife was interested in, a big nice baby
3 grand piano, and Mrs. Silberman wanted, I think, $1,000.
4 or $1,500. for it and, in fact, that may have been
5 when she was discussing about the piano when my wife
6 ascertained that the sale did or did not go through.
7 I am not even sure that there was a dis-
8 cussion at that time, but there was a discussion about
9 the piano. That was the whole aspect at that particular
10 point.
11 It was during one of the conversations
12 about the piano, which luckily I didn't purchase; I
13 didn't want the monster in my house.
14 At this point I might have mentioned this
15 one buyer who was interested in the house, but my main
16 particular concern at the time was the piano.
17 Q Was Mrs. Silberman at the house at that
18 time?
19 A Absolutely not. She had gone away and
20 then some neighbor had mentioned the fact that she had
21 come back from somewhere, and that was when my wife
22 asked the neighbor. I don't know which neighbor it
23 was, it was somebody around -- the normal yenta on
24 the block there -- that there was a piano around.
25 Q By the way, who told you that the deal did

not go through?

A That would be purely speculation. It could have been either the yenta on the block who could have given the number. I specifically said when I made that statement that I don't know exactly who stated it.

We had known that the house was sold and asfar as we were concerned that was about all that was over there.

Q Do you know the name of this yenta on the block?

A I really don't know. It could have been one of them yentas that could live around the block. As I said, I am not a great socializer by far.

Q Now, do you recall during the conversation where you mentioned that you might have a possible purchaser?

A I object to that; I object to that right now. I object because I said that I did not know if I had the conversation or my wife. In fact, I specifically mentioned that I did not know whether it was this conversation or a later conversation.

Q Was this obviously a telephone conversation?

A Obviously it was a telephone conversation.

Q Do you have any recollection whether Mrs. Silberman made any response to that statement, either made by your wife or by you, yourself?

A I would have no idea.

Q Do you have any recollection whether sh mentioned what the price would be to purchase the h

A All I know is that she may have mentione it and, again, I say this on purely speculation becau I can only mention what she may have mentioned, which was that the sale of the house did not go through whic she was negotiating.

She talked with my wife about the piano, and she told her that she could have sold the house for some large sum of $56,000., and she wanted them to buy the piano for $2,000., and she did not want to buy the piano, and she was ready to take much less for the house.

Q Do you have any recollection whether she gave any specific price with which to go back to Dr. Beer?

A At this point I don't remember the specific price. I could not tell you if she did or if she had given it to me in a ballpark figure.

If you are going to pin me down that she

gave me a specific price, I can't answer that; I don't remember.

Q Would it be fair to say that probably most of these conversations were between your wife and Mrs. Silberman?

A Sometimes it was with me, because my wife couldn't stand the fact that she was crying. My wife is a very sensitive creature and she just could not stand the fact of Mrs. Silberman crying on the phone about her sickness. So, quite often I would get on the phone.

Q Did you or your wife receive the key to Mrs. Silberman's house?

A Yes, to look at the piano.

Q When did you receive that key?

A I really would not know. I know that we received the key and gave the key to our neighbor to have. We had it for a short time, a week and a half or two weeks, and we gave it to our neighbor. Who, I am not in fact talking to this neighbor, and our relationship with her then was only because that neighbor was supposed to take care of the boiler.

Q Was that during the same period of time?

A Yes. We had it for a short time.

Q Did Mrs. Silberman either give you or your wife permission to show either Dr. Beer or other prospective purchasers the house?

A I know that the key was given primarily for us to look at the piano.

All right. I know also that my wife showed either Mendel Beer and Peter Beer the house. At first when Mendel had asked me about it I had first showed them the outside of the house, so I don't know whether my wife decided one way or another, but she did not get the key primarily for that because I would not let her get involved in real estate negotiations.

Q You said that you showed Dr. Beer the outside of the house at one time?

A Yes, a little bit more than the house from the outside, and also I showed him the porch where you could look in.

The kids found out how to climb in.

I might have had the key at the time, but because I am a firm believer of the laws of trespass, and because I don't feel myself in the real estate business, I gave the key to the neighbor.

Q Do you recall how the arrangement was made for Dr. Beer to come over in order for you to show

him the house from the outside?

A I don't know whether there was any arrangement made. In other words, he may have dropped over suddenly and he said "Let me look at it."

Q At the time that you were showing the house from the outside to Dr. Beer, do you recall whether or not you discussed the price?

A Obviously I must have mentioned the fact that the approximate price was lower than $50,000.

Q Do you recall whether or not there were any other discussions regarding the house at that time?

A When? Would this have been last September?

Q Right.

A It would be quite difficult to have too many discussions over there.

Q I am talking about the first time when you were showing him the house from the outside.

A I just showed him the house and we discussed it in relationship to my house, and that was about it. In fact, he asked me whether the attic was finished, and I had never been in the house except to look at the piano.

Q Subsequent to that time that you showed Dr. Beer the house, did you have any further conversa-

2 ion with Dr. Beer regarding the house?

3 A I am going to make the following statement

4 that in all probability I would have, if and when they

5 went to look at the house.

6 If you are going to ask me the exact

7 nature of what occurred during these conversations I

8 could not remember that. Maybe I said "How was the

9 house on the outside," or something of that nature if

10 he spoke to me about it.

11 Q Do you recall having any further conver-

12 sations regarding the price of the house, other than

13 the ones that you have mentioned with Dr. Beer?

14 A Yes, I think in the end when he got the

15 house or purchased the house, he told me what price

16 it was, and I still do not remember what it is today.

17 I am very bad on remembering numbers.

18 Q Did you have any knowledge that the pur-

19 chasers of the house were black, the original purchasers

20 of the house?

21 A I object to that question.

22 Q On what ground?

23 A On the simple ground that in general it

24 is of no concern to me whether the person is black,

25 white, or anything else. I wouldn't have inquired of

that particular point, so I don't see the relevancy of that particular question.

Q Do you recall whether or not the yentas had indicated to you, or, a yenta had indicated to you that the person who was purchasing the house was black?

A Not that it made any difference. The yenta may have said something, but no, I don't recall.

Q Do you recall whether anyone else had indicated to you that the people to whom the house was being sold to by Mrs. Silberman were black?

A Again, you are asking a question in the same manner and, again, I would have no specific recollection of that.

Q Do you know a Mr. Rosenberg on 71st Road?

A Do I know a Mr. Rosenberg; and the answer is no. Might I know a Mr. Rosenberg, and the answer is, yes, because I might have encountered him and there are hundreds of Rosenbergs.

Q At this point would you have any recollection?

A No, I said, no. Mr. Rosenberg would never have come to my house, or, did he ever make a telephone call to my house.

Q Did you ever see any black individual around that period of time in September looking at the Silberman house or in the Silberman house?

A No.

Q During any of your conversations with Dr. Beer, or, any of the conversations that your wife had with the Beers, was the fact that the previous prospective purchasers were black ever mentioned?

A Not that I recollect at all.

Q Was the fact that the previous prospective purchasers were not Jewish mentioned?

A Again that would not have any significance.

Q Was the fact that the previous prospective purchasers were not Jewish mentioned in your conversation with the Beers?

A No.

Q By the way, did you have any conversation with Mr. Murray or with Mr. Ribowsky?

MR. MURRAY: Objection to the question because it is a double question.

Q Did you have any conversation with Mr. Ribowsky, the lawyers for the Beers?

A Yes, now that you mentioned it, he went to Brooklyn College with me -- I am very bad on

2 names.

3 Q Did you have any conversation with him

4 during this period of time?

5 A No.

6 Q Did you have any conversation with Mr.

7 Murray during this period of time?

8 A No.

9 Q Other than the conversations that you have

10 mentioned, and the instance where you showed Dr. Beer

11 the house, did you do anything else to assist him

12 in the purchase of this house?

13 A Let's stop playing games. I was not in any

14 position to do anything.

15 Q Is it your testimony that you have no

16 recollection of any conversations regarding the race

17 of the previous purchasers?

18 A Asfar as to the best of my recollection,

19 I have no recollection of that.

20 If and when it might have occurred, and

21 somebody would have mentioned it to me it would have

22 gone in one ear and out of the other ear if such a

23 thing was mentioned.

24 Q Do you have any knowledge of any people

25 on that block expressing a concern to somebody regard-

ing the race of the previous purchasers of that house? I am talking about any discussion that you heard.

A Not that I remember. I am not that much on the block. I am around and then I disappear during the yenta periods. When everybody comes home, I am not a very great socializer.

Q Do you recall subsequent to the time that you called Dr. Beer and you told him that the house was available, whether or not you had a conversation with Mr. Smetana regarding the Silberman house?

A Probably I had a conversation with Mr. Smetana, but I don't know whether it was in regard to that house or anything else. In fact, I had a few conversations with Mr. Smetana.

On the occasion when I saw him, I don't know if he is in the real estate business now, the conversation that he had with me was that he is very upset with the orthodox crowd moving in there because they tend to go ahead to do things without real estate processing. In other words, they sell one friend to the other which affects him.

Q Did you assist in any way with Dr. Beer selling his previous residence?

A Absolutely not.

205A

MR. HOFFMAN: I have no further questions of the witness.

EXAMINATION BY MR. MURRAY:

Q Rabbi Sprecher, do you have any black acquaintances?

A Yes, sir.

Q Would it have mattered to you if a black family would have moved into your area?

A Hypothetically, no.

MR. HOFFMAN: Note my objection to both of the questions.

MR. MURRAY: I have no further questions of the witness.

MR. HOFFMAN: I have no questions.

oOo

_____
BENJAMIN G. SPRECHER

Affirmed to me this

_____day of _____, 1976.

_____
Notary Public

C E R T I F I C A T E

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, HELEN FAIRBANKS, a Notary Public within and for the State of New York, do hereby certify:

That this is a true record of the testimony given by the witness, BENJAMIN G. SPRECHER, at the deposition of said witness held on October 11, 1976.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of November, 1976.

Helen Fairbanks

Reporter

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

DUCKETT, :

Plaintiff, : 75-C-1749

-against-

SILBERMAN, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

November 6, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE THOMAS C. PLANT, U.S.D.J.

Appearances:

MESSRS. HOFFMAN & WELLS
Attorneys for Plaintiff

BY: THOMAS HOFFMAN, ESQ.
-and-
GEORGE HAIRSTON, ESQ.
Of Counsel

G. MURRAY, ESQ.
Attorney for Defendant

MMsf

MR. MURRAY: The facts in this case are very simple. It will be patent from the evidence that will be produced that there was no discrimination in this case but in fact a better opportunity came along and that is what happened.

THE COURT: All right.

Call your first witness.

P E T E R W. S M E T A N A , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows: —

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q Mr. Smetana, where are you presently employed?

A Teitelbaum Realty Company.

Q How long have you been so employed?

A Seventeen years.

Q What do you do for Teitelbaum Realty Company?

A I am a salesman.

Q Have you been a salesman for 17 years?

A Yes.

Q Would that be salesman for real estate property?

A Yes.

THE COURT: Where is that located?

THE WITNESS: 73-15 Main Street, Flushing,

New York, 11367.

Q Did there come a time when Mrs. Silberman came to you regarding her desire to sell a house?

A Yes, sir.

Q When would that time have been?

A I believe, sir, and I am not 100 per cent sure of this but it was during the winter.

THE COURT: Of what year?

THE WITNESS: Of this year, I believe. Beginning of this year.

Q To the best of your recollection, what, in words or substance, what was the discussion?

A Mrs. Silberman came to my office and asked me to come and look at her house which I did and she mentioned to me that she would soon put the house up for sale. Quite some time thereafter, a few months thereafter, I do not know, I received a telephone call either from Mrs. Silberman or her daughter, Mrs. Brickman, that the house now was ready for sale.

At some point I went over to the house the very day that I believe Mrs. Silberman had to be moved or was moved to an old age home and I was then given the listing to sell the house.

I believe this to be in the spring of this

year. There seems to be a question with some of the other people in the office that it was actually in the winter. I couldn't actually recollect.

Q Did you ever talk personally to either Mrs. Silberman or Mrs. Brickman?

A I did.

Q Mrs. Brickman is the daughter of Mrs. Silberman?

A Yes, sir.

Q And you have talked to her personally?

A Yes.

Q Do you see her in the courtroom?

A Yes, I think this is Mrs. Brickman. I am sure it is her.

Q Now, did you have a conversation with Mrs. Silberman regarding the fact that Mrs. Brickman, is that correct, would be negotiating the house on behalf of her mother?

A Could you repeat that question, please?

A Did Mrs. Silberman authorize you or did you have a discussion with Mrs. Silberman to the effect that Mrs. Brickman would be negotiating the house in her behalf?

A No, sir, I don't think so.

Q But it was Mrs. Brickman who called you, is that what your testimony is?

A Yes.

Q She called you telling you to put the house up for sale?

MR. MURRAY: The testimony was either Mrs. Silberman or Mrs. Brickman.

THE COURT: Yes.

Q You do not recall which one?

A I couldn't tell you which one it was, sir.

Q Was there a price that the house was to be put up for sale?

A Yes, sir.

Q What price was that?

A Sixty thousand dollars was the original price.

Q Did there come a time when a Mr. George Duckett and his wife came to see you regarding the purchase of a home?

A Yes, sir.

Q When would that have been?

A May I refer to my notes?

THE COURT: Yes, sure.

A Somewhere around June 22, 1975.

Q During this period of time between, when the house was initially listed with you and June, were you

having discussions with either Mrs. Silberman or Mrs. Brickman?

A Yes, sir.

Q Who were you having discussions with?

A Primarily with Mrs. Brickman.

Q What was the nature of those discussions?

A We were discussing the sale of the house, the condition of the house and at one time an offer that I had on the house.

Q Did you show Mr. Duckett this particular premises?

A Yes, sir.

Q And did he give you -- what was the substance of that discussion? When you showed him the house, what did you discuss with Mr. Duckett?

A I showed Mr. Duckett the entire house, I pointed out to him that there were certain things wrong with the house. I discussed with him what I thought it would take to fix the house and that's it.

Q Did you advise Mr. Duckett what the price of that house would be in order for him to purchase?

A At that time the price of the house had come down based on the previous offer that I had negotiated which was now consummated to a price of $55,000. Therefore,

the price I quoted to Mr. Duckett was $55,000.

Q Prior to that time, isn't it true that actually the price was reduced to $50,000 with another person?

MR. MURRAY: I object.

THE COURT: He has already testified to that. He said that the price had come down based on the prior offer of $55,000.

MR. MURRAY: He just said $50,000.

THE COURT: I thought I heard $55,000.

Well, do not lead the witness.

Q Did you have another purchaser -- prospective purchaser for that house?

A Yes, I did, sir.

THE COURT: Is this the one where you had reduced the price to $55,000?

THE WITNESS: Yes, sir, he had given me an offer for $50,000.

THE COURT: Your seller had only authorized you to go down to 55?

THE WITNESS: I believe so, yes. They offered $50,000.

Q My question to you is, what is the name of the individual who offered $50,000?

A Mr. Jerry Lavoritz, I believe.

Q He withdrew his offer evidently, isn't that true?

MR. MURRAY: I object to this line of questioning.

THE COURT: I will allow it subject to connection.

MR. MURRAY: It is his witness.

THE COURT: I am cautioning you not to lead the witness. I will sustain it on that ground. There was a prior offer of $50,000 and the seller had agreed to accept only $55,000. Is that the reason why the deal fell through?

THE WITNESS: The seller had refused to accept the $50,000 and the offer was then lowered to $48,000 based on the condition of the house. In other words, first I had the offer of 50 and then Dr. Levoritz had a series of people look at the house and reduced the offer to 48 and then withdrew the offer altogether, so we didn't get any deal at all.

BY MR. HOFFMAN:

Q Did the sellers reduce their asking price?

THE COURT: To 55?

A No, sir, I was still told at that time to

ask for $55,000.

Q Did Mr. Duckett make any counter offers --

A Yes.

THE COURT: All right.

Proceed.

Q Did he make any counter offer to the $55,000?

A Yes, he did. Not the first day but quite a bit later.

Q What was the counter offer?

A In the low 40's.

THE COURT: What does that mean?

THE WITNESS: I honestly don't remember if it was 40 or 41 or possible 42.

THE COURT: Between 40 and 42?

THE WITNESS: Yes, sir, I am almost tempted to think it was above 40, it is a long time and it was such a low offer that I didn't even write it down.

BY MR. HOFFMAN:

Q During this time, were you having conversations with Mr. Duckett?

A Yes.

Q Would this have been around June of 1975?

A I had conversations with Mrs. Brickman approximately every week and a half or two weeks.

Q Did there come a time when the question of Mr. Duckett's race or religion arose?

A Yes, sir.

Q What was the nature of that conversation?

A Some time when we had reached a point of Mr. Duckett having made me an offer of $44,000 and when I felt that the other side was somewhere ready to accept the price based in the mid 40's, the question arose if Mr. Duckett was Jewish and my answer to that was that he was not and somewhere in that conversation the question arose where Mr. Duckett was a colored gentleman.

Q Isn't it a fact that Mrs. Brickman asked whether or not the question whether he was black?

A I believe it did come up in the conversation.

Q Just to help you recall. Do you recall testifying under oath in a deposition?

A Yes, sir, of course.

Q In my office?

A Yes.

Q Do you recall this question being asked and your answer being given --

MR. [illegible]: What page?

Q Page 18, Line 22: "Mrs. Brickman asked me, 'Mr. Smetana, are these people Jewish?'"

MR. MURPHY: I object to the reading of this because I do not think it is inconsistent with what he testified to.

THE COURT: Maybe I better have a copy of it then.

What is inconsistent with what he said so far?

MR. HOFFMAN: I believe he testified that he didn't recall how it came up.

THE COURT: No, according to my note, she asked whether he was Jewish and he said no and he believed the question came up whether he was black. Then some time later Mrs. Brickman asked --

Well, all right, I will let you read it. I do not think it is inconsistent with what he said.

Go ahead and read it.

BY MR. HOFFMAN:

Q Before I read it, do you recall who raised the question [illegible] was white or [illegible]

THE COURT: I will allow it.

Q Who raised that question?

A Mrs. Brickman asked me if he was -- in the conversation it came up and Mrs. Brickman asked, is he Jewish, and then in the conversation it came up, is Mr. Duckett black or not black, colored, I would say.

Q Now, did there come a time when a price had been agreed upon between both the sellers and the purchasers?

A Yes, sir.

Q When was that?

A At the end of August some time around August 19, 1975.

Q And what was the price?

A The price was $45,000.

Q What do you recall occurred after the price was agreed upon between the purchasers and the sellers?

MR. MURRAY: I think he just answered that.

Q After it was agreed upon what did you do?

A When the price was --

THE COURT: I want to be a little more specific on this. This date of August 19th. I think it was some time after this conversation you had where Mrs. Brickman was Jewish or white?

[illegible] it was quite a few days

later.

THE COURT: Then around August 19th you say there was an agreed upon price?

THE WITNESS: Yes.

THE COURT: With the parties face to face at this time or did you talk to one and then talk to the other?

THE WITNESS: All conversations took place on the telephone.

THE COURT: So you talked to one and then talked to the other?

THE WITNESS: Yes, sir, always.

THE COURT: They never talked to one another. You talked to one and said -- you tell me what you said to each of them that led you to that conclusion. Who did you talk to first?

THE WITNESS: Well, Mr. Duckett would give me an offer and I would communicate it with Mrs. Brickman and she would lower the price and I would come back to Mr. Duckett and tell him of the new price until we reached the point where the people were ready to sell --

THE COURT: Yes, on August 19th.

THE WITNESS: On August 19th, I received a

phone call, not from Mrs. Brickman but a gentleman who I believed identified himself as Mrs. Brickman's brother, Mrs. Silberman's son from Wisconsin, where I had understood Mrs. Silberman had been at this time. And he told me that he had heard that we now have a fixed firm offer of $45,000 and he agreed to accept that $45,000. Thereupon I called Mr. Duckett on the phone and said, Mr. Duckett, I said congratulations or some words to that nature, "You have bought a house, can I have the name of your attorney".

At this time I had to find out if he was still interested in buying the house and he said yes and he said he would have his attorney call me, I called back Wisconsin to ask for the name of the attorney of the seller.

A few days later I received a phone call from Wisconsin giving me the name as Mr. Gerard Murray as attorney of the seller and I received a phone call from Mr. Duckett or Mr. Hoffman, I think it was Hoffman called me and said: I am the attorney for George Duckett. Either way.

At that point I gave the attorneys each other's names. Mr. Murray was in Spain I [illegible]

informed and didn't return until the following Monday which could have been the 25th or 26th. Then Murray called me and asked me for the terms and I gave him the name of Hoffman and gave Hoffman the name of Murray.

I gave them the terms of the deal, $45,000 subject to a conventional mortgage.

THE COURT: Of how much?

THE WITNESS: Subject to obtaining a new conventional mortgage.

THE COURT: Of how much?

THE WITNESS: Can I go to my brief case, I do not know if it was 20 or 25 per cent down.

THE COURT: It is 20 or 25 per cent down?

THE WITNESS: Right. That was it.

BY MR. HOFFMAN:

Q When you were negotiating with Mr. Duckett prior to the price having been agreed upon, was there any discussion about a lock in the upper bathroom?

MR. MURRAY: I object. There were a lot of negotiations. At what point?

THE COURT: Yes, and with whom?

Q Prior to the price having been agreed upon which could be August 19th, did you have a discussion

Mr. Duckett?

A Yes.

Q What was the nature -- when did you have that discussion?

A I believe, sir, honestly I do not know the date, either the first, second or third time that Mr. Duckett looked at the house.

THE COURT: When approximately would that be?

THE WITNESS: June 28th, June 30th, beginning of July.

THE COURT: One of these three you had a conversation with Duckett about a leak?

THE WITNESS: Yes.

Q At that time did you indicate -- what did you indicate to him regarding that leak?

A At that time I told him I would like to convince the sellers to fix the leak.

Q When the price was agreed upon on August 19th, was that leak discussed?

A No, sir.

Q Now the question of that bathroom leak arose subsequent to August 19th?

A Yes, sir.

Q [illegible] which [illegible], is

that correct?

A Yes.

Q What was that other issue?

THE COURT: Who raised the leak question after August 19th?

Q Who raised the problem with the bathroom leak? Do you recall?

A I received a call from Mr. Murray, I believe, telling me that it looked like there was a problem with the deal because Mr. Hoffman was raising the question of a leaky stall shower and other conditions which seemed difficult to meet.

Q When would this have been?

A At the end of September -- no, oh, I'm sorry, yes.

Q Do you remember the other issue which was raised by Mr. Murray?

A The condition of the house itself. In other words, what was the condition of the house going to be at the time of delivery of the deed versus the condition of the house at the time of the contract of sale.

Q There was a problem because the house was [illegible]

[illegible]

THE COURT: Sustained.

Q Other than those two issues, were any other issues raised?

A Not to the best of my knowledge, but may I interpose something on my own, sir?

MR. HOFFMAN: I would rather you wouldn't unless the Court would want you to.

THE COURT: I won't interfere at this time. Hold on to what you have got. Maybe we can get to it later.

The only two issues raised was the leak in the bathroom and the other was what was the condition of the house to be at the time of the sale?

THE WITNESS: That is what I was aware of.

THE COURT: And Mr. Duckett told you those were the questions that Mr. Hoffman raised with him?

THE WITNESS: Yes, sir.

BY MR. HOFFMAN:

Q Was there a conversation which you had with myself whereby those issues were -- withdrawn.

MR. MURRAY: I object to him leading the witness.

THE COURT: Sustained.

Q Did you have a conversation -- strike that.

What occurred after Mr. Murray raised these issues?

MR. MURPAY: You mean as far as this witness is concerned?

A I called Mr. Duckett or he called me, I couldn't recall and I told him at that time that as far as the shower was concerned I felt that if he would take over the existing insurance policy on the house that there was a good possibility that part of that leaky shower and situation could be resolved by some compensation from the insurance company, to be specific, the removal of tiles, repainting of ceilings.

In other words, work necessary to repair the shower would be in part paid by the policy. I specifically told him that the lead pan and plumbing work necessary would have to be borne by him.

This was on a Thursday. Mr. Duckett called me back on a Monday, I remember and asked me if I had an existing insurance policy and I said I didn't, nor would I know where I would be able to get ahold of it and I believe I suggested he contact you, Mr. Hoffman, and maybe Murray might have the policy. Not all policies cover this but most homeowners do.

Q When you say the following Monday, what

Monday would that be?

A I could not answer that. I have no recollection.

A If I show you a calendar would that help you?

A It must have been after or during my vacation, again towards the end of September.

Q Did there come a time when you had a discussion with me regarding those two problems?

A Yes.

Q In words or substance what was that discussion?

A The discussion was again that I discussed the stall shower, again I mentioned I didn't think this was something that was that serious that 200 or $250 of Mr. Duckett's own money would fix it and then came the condition of the house and at that time I volunteered that if, you suggested an arbitration procedure, or an arbitrator and I said maybe I could become an arbitrator as to what the condition would be like today and what it would be like at the time of the closing.

Q Was there any discussion of remuneration or payment?

A I -- certainly not with you, sir. No, sir.

Q Was there any discussion with anybody else as far as your getting remuneration for this?

A I do not recall. No, sir.

Q On or about September 19th, do you recall having a conversation with me regarding these issues?

A Yes.

Q What was the conversation you had with me in words or substance?

A You told me that day that your client was prepared to sign a contract without the provisions, or without the stall shower being repaired and without the arbitration issue being any longer an issue.

Q Did you communicate --- strike that.

As of that date were there any other problems as far as you were aware of or open issues?

A As far as I was aware of there were no other open issues but as I was on vacation from September 1st to September 23rd, and I had very little or no communications from either party at this point. As a matter of fact I have never received a letter or any other correspondence that went on between the parties.

Q After you had that conversation with me, did you get in touch with Mr. Murray?

A Yes, I called him.

Q When did you get in touch with Mr. Murray?

A [illegible] day on the following Monday.

Q In words or substance, do you recall the conversation you had with Mr. Murray?

A I told Mr. Murray that I had spoken to you and you had indicated to me that you were willing to take the house without the stall shower being fixed and without the arbritation issue being raised.

Q What did Mr. Murray say to you?

A Mr. Murray expressed a fear to me that there would be other issues raised since so many other issues were raised in line with this. I communicated to him --

Q To the best of your recollection, what did he say?

MR. MURRAY: Do not interrupt the witness.

A I can't recall exactly what he said.

Q Did he raise any issues?

A No new issues were raised.

Q After that conversation, did you contact Mr. Murray again?

A I spoke to Mr. Murray, yes, several times after that.

Q Would it have been the following week?

A I would say so, yes.

Q What was the nature of the conversations during that week?

A I just kept on questioning and trying to find out if my deal could in any way be saved, in other words was there anything I could do to save the deal.

Q Were there any new issues raised during that week by Mr. Murray?

A No.

Q And by Mr. Duckett or myself?

A No, sir.

Q To the best of your recollection, what occurred after that week, and I believe you stated you had a conversation on the 19th and you were talking with Mr. Murray the following week, so we would be getting into the beginning of the week of September 29th?

A Let me go back to August 16th, when I was not in the office and Mr. Duckett called and spoke to my boss, Mr. Teitelbaum, and the message I got was terse, it said Mr. Duckett called Silberman, no contract yet signed. That goes back a little further.

Q The message was contract not signed?

A Correct.

Q In fact the contract wasn't signed, is that right?

A I have no knowledge of that.

Q Did you begin showing this house to other

people?

A Yes.

Q At what price were you showing this house?

A Forty thousand dollars.

Q Did you get any instructions from the sellers to show that house to other people?

A No direct instructions from the sellers to show the house to other people, instructions from Mr. Teitelbaum. Our deal collapsed and so if there were other people interested in the house and we were trying to see if we could get a secondary, as we call it.

THE COURT: You felt the deal collapsed on August 26th?

THE WITNESS: But I was trying to solve it.

THE COURT: You started to show the house --

THE WITNESS: I started to show the house at the beginning of October only for a period of three or four times.

THE COURT: Not when you got this message?

THE WITNESS: Oh, no. I was still trying to save the deal.

THE COURT: [illegible] you started showing [illegible]

THE WITNESS: [illegible]

your Honor.

BY MR. HOFFMAN:

A Were you ever told by Mr. Murray that they were not going to sell the house to Mr. Duckett?

MR. MURRAY: I object.

THE COURT: It is a leading question, but I will allow it.

Were you ever told by Mr. Murray?

THE WITNESS: That he was not going to sell the house to Mr. Duckett?

THE COURT: No?

THE WITNESS: I was not told by Mr. Murray that he was not going to sell the house to Mr. Duckett, no, sir.

Q Did anybody else communicate that to you?

A I had no communication at this time except you and Mr. Murray and I was told that the deal had collapsed. This is why I tried to see if I could get a secondary deal going on it.

THE COURT: Who told you the deal had collapsed?

THE WITNESS: Conversations between both Mr. Murray and Mr. [illegible] led me to the conclusion that there was no deal to be worked on it and I

worked for three months trying to make an already scaled down commission. To make this deal I had agreed to reduce my commission to $2,000. It was based on my reduced commission that I was able to get the deal across for $45,000.

THE COURT: Around September 29th you got the impression from these two gentlemen there was no deal?

THE WITNESS: Yes and I was trying to make another deal.

BY MR. HOFFMAN:

Q Was there any indication from me that we did not want to buy that house?

MR. MURRAY: I object to the constant leading.

THE COURT: Sustained.

Q After the 19th of September, were you having discussions with me?

A Yes.

Q What was the nature of those conversations?

A In your final conversations I had the feeling you were ready to buy the house, your client was ready to buy the house.

Q [illegible] to Mr. Murray?

A During discussions I had with Mr. Murray I told him I felt your client was prepared to buy the house. Yes.

Q The area where Mr. Duckett was trying to purchase his house, would you have an opinion as to its racial composition?

MR. MURRAY: I object.

THE COURT: Where is this, Flushing?

THE WITNESS: Yes, sir.

THE COURT: I will sustain it without more factual basis for what you are talking about.

BY MR. HOFFMAN:

Q During your 16 years as acting as a broker, have you been engaged in selling houses in the Flushing area?

A Yes, sir.

Q During this period of time, do you have knowledge or opinion as to the racial composition of the area where Mr. Duckett was buying the house?

MR. MURRAY: I object. It is beyond the scope of the issues. I believe it is clearly whether there was discrimination in this particular case.

THE COURT: Right at possible the motivation

for discrimination might be based upon the composition of the area? I don't know. An inference might be drawn from that.

For example if the area were wholly black there might be no motive for discrimination, if the area were wholly white, 100 per cent white, there might be a motive for discrimination.

That might be what he is trying to get at. I will allow it.

MR. MURRAY: Subject to connection?

THE COURT: Yes.

BY MR. HOFFMAN:

Q Let me show you --

THE COURT: He can answer the question.

MR. HOFFMAN: I am sorry.

Q Do you have an opinion as to the racial composition of that area?

A Yes.

Q And what is it?

A Well --

Q What is the percentage as to the percentage of Negroes versus percentage of other than whites?

A Could I see for a calculation of the area?

THE COURT: We are talking about the

Flushing area where this house is located. I assume Flushing has various parts with it, the only part I am familiar with is central Main Street. I assume there are other areas.

THE WITNESS: I am only familiar with the Kew Garden Hills. Kew Garden Hills is predominantly white.

THE COURT: When you say predominantly, it is more than 51 per cent?

THE WITNESS: Yes, sir, it means more than 50 per cent.

THE COURT: How much more?

THE WITNESS: Again the question arises, Kew Garden Hills has several areas within the --

THE COURT: Let us take the overall area of Kew Garden Hills, what percentage is white?

THE WITNESS: As to the whole population of Kew Garden Hills, my guess would be that the population would be 90 per cent white and 10 per cent colored. Let me say 85 per cent white, five per cent oriental and ten per cent colored.

THE COURT: What is the overall area?

THE WITNESS: Yes. The overall area of what [illegible] Hills.

THE COURT: Now, would you take this drawing that has been handed to me and mark up Kew Garden Hills with red, the area which you say is Kew Garden Hills.

THE WITNESS: Yes, sir.

MR. MURRAY: Are these block numbers on your map?

MR. HOFFMAN: No, this is a census map.

THE WITNESS: My question is that this is Kew Garden Hills Post Office 11367?

THE COURT: It is just north of 25-A.

THE WITNESS: This would be Grand Central Parkway, this is the Van Wyck, this is the cemetery and over here is Queens College, this goes up to Parsons Boulevard all the way down to the service road of Grand Central and then back to the place.

THE COURT: Where is St. Johns University?

THE WITNESS: That would be on Union Turnpike -- right here. If you mark an X right here, this is the campus of St. Johns University.

THE COURT: Would you mark this Plaintiff's Exhibit 1?

THE CLERK: Plaintiff's Exhibit 1 so marked.

(Continued)

THE COURT: X marks where St. Johns University is and the square is what is called Kew Garden Hills.

MR. MURRAY: Are you offering that in evidence?

THE COURT: If he doesn't, I will. I have got to know where the area we are talking about.

MR. MURRAY: It is not a certified copy.

THE COURT: It is just a map so I know what we are talking about. I won't use it for any other purpose.

THE CLERK: Map received in evidence as Plaintiff's Exhibit 1.

(So marked)

MR. HOFFMAN: If the Court would desire to have the map more meaningful, those numbers are census track numbers.

THE COURT: I understand where the area is.

MR. HOFFMAN: I have the 19 -- the last census taken which will indicate in each of these tracks the percentage of whites and blacks.

THE COURT: How are you going to get that in?

[illegible] Well, in the official 1970 [illegible]

[illegible]

he agrees.

MR. MURRAY: He produces a bunch of Xerox copies.

THE COURT: If you want an authenticated copy you can have it.

MR. MURRAY: I object to it.

THE COURT: All right.

I will sustain the objection. I didn't take the map for the census track but as a general map of the area so I would know where we were.

BY MR. HOFFMAN:

Q Did you have conversations about late September or early October with the individuals regarding the fact that you were selling this house to a black person?

MR. MURRAY: I object.

THE COURT: Sustained.

Q Did you have any conversations with neighbors of Mrs. Silberman regarding your selling this house?

MR. MURRAY: Objection.

THE COURT: I will take it yes or no, but I won't permit the conversations.

A Yes, sir.

Q In those conversations did the [illegible] of [illegible] make this [illegible]?

MR. MURRAY: Objection.

THE COURT: Sustained.

Q Do you have an opinion whether or not your having shown this house to Mr. Duckett had an adverse effect on your business?

MR. MURRAY: Objection.

THE COURT: Sustained.

MR. MURRAY: I believe the witness wants to ask your Honor something.

THE COURT: No.

THE WITNESS: Can I ask a question not related to this?

THE COURT: No, you may only answer questions.

MR. HOFFMAN: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. MURRAY:

Q You mentioned you had a conversation on the telephone with Mrs. Brightman concerning the race of Mr. Duckett?

A Yes, sir.

Q Was this conversation the [illegible] contained on the [illegible] of this [illegible]?

A [illegible] conversation.

Q For quite some time?

A Yes.

Q And the sellers greatly reduced their price after they knew Mr. Duckett's creed?

A Yes.

Q That obviously was not the reason for the breakdown in the negotiations. Is that correct?

A No, sir.

MR. HOFFMAN: I object to that as a conclusion.

THE COURT: I am not sure what the answer meant anyway?

MR. MURRAY: I guess it is just a conclusion. I am sorry.

Q Did Mrs. Brickman tell you don't sell Mr. Duckett the house because he is black?

A No.

Q Did she continue with negotiations for a long period of time after that?

A Yes.

Q And also give him a much lower price than anybody else got before?

A Yes, sir.

Q Mr. Hoffman gave you a deed, September 10th.

Are you sure of that date or could it have been a little later or sooner?

A To the best of my knowledge and recollection, I am sure of that date.

Q Did you make a notation?

A I seem to recall this was the last day of my vacation and it was a Friday.

Q But you made no notation?

A That's correct.

THE COURT: Were you home or at the office?

THE WITNESS: I was home and I know it was close to 5:00 o'clock because I had to pick someone up at the subway.

MR. MURRAY: May I refer to the motion papers?

I would like to refresh your recollection.

THE WITNESS: Could I ask one question?

I have high blood pressure and I am supposed to take a pill.

THE COURT: Oh, yes, certainly.

MR. [illegible] May we take five minutes?

[illegible]

[illegible]

BY MR. MURRAY:

Q I refer to Exhibit B, letter addressed to me dated October 3rd, since it is in the exhibits --

MR. HOFFMAN: He will have to show that he received that.

MR. MURRAY: I want to refresh his recollection.

Q Read this letter and see if it helps you refresh your recollection?

MR. HOFFMAN: That is not a letter by Mr. Hoffman.

THE COURT: It doesn't make any difference. He can show him a piece of toilet paper if it will refresh his recollection. It is all right.

Q Please read that letter and see if that helps refresh your recollection as to the date you were informed that Mr. Hoffman withdrew those two conditions.

A I am sorry, I am reading the letter.

Q I am sorry. You read the letter.

A I have read it.

THE COURT: Does that refresh your recollection?

[illegible] Yes, I [illegible] the date is October [illegible]

Q [illegible]

that date?

A Everything we are discussing is close to that date.

Q Could it have been that date rather than the date that Mr. Hoffman spoonfed you on the stand?

MR. HOFFMAN: I object.

THE COURT: Sustained.

Q Could it have been that date --

MR. HOFFMAN: Objection. I didn't mention September 19th. He did it.

A I am getting very confused. I think the first time I was told about this again -- context was September 19th. On the other hand -- I couldn't recollect either date.

Q It could have been another date, is that what you are saying?

MR. HOFFMAN: He answered that.

THE COURT: Overruled.

Q It could have been that date? Is that possible or close to that date?

A Everything was close to that date.

Q Are you saying it could have been close to that date or it could not.

MR. HOFFMAN: [illegible]

A My original recollection was that it was in September, Mr. Murray. My original recollection is that it was in September.

Q My question is could that conversation have taken place that week rather than the week you have testified to, with the aid of the exhibit I show you that Mr. Hoffman produced?

MR. HOFFMAN: Let him answer the question.

THE COURT: This is cross-examination.

Could it have been on October 3rd?

Q Is it possible?

A There is a possibility that I was wrong in my original testimony. It could possibly have been, but I don't think so.

Q During the course of our conversations, did I ever mention to you that we had a buyer under more favorable terms?

A Yes.

Q Do you remember when that was mentioned?

A At the beginning of October, sir.

Q Was that the reason I gave you for the collapse of the negotiations or did I give you some other reason?

A The reason you gave me is you had another

buyer who was willing to pay more money and willing to meet all terms.

Q At a higher price?

A That's what I said.

Q And without a broker, without a broker's commission?

A Yes, sir.

Q Was the reason why this deal with Mr. Duckett broke down --

MR. HOFFMAN: Objection. Thatis what you have to decide.

THE COURT: No, it isn't. He talked about collapse of the deal and the question is to the best of your knowledge, is this what constituted the collapse. I'll allow it.

A Yes, sir.

Q You mentioned that you had told Mr. Duckett there was a chance the seller in early June or late June or early July that you could try to get the seller to fix the bathroom?

A Yes.

Q What was the asking price at that time?

A [illegible]

Q [illegible]

consummation when it was in the mid 40's?

A No, sir.

Q You advised Mr. Duckett of some insurance that might help?

A I said if he would take over an existing policy or even with a new policy that part of this shower pan leak, which is a standard problem in our area, could be recovered.

Q Did you ever tell Mr. Duckett in the mid 40's at level that Mrs. Silberman would absorb the cost of the shower at that point?

A To the best of my knowledge, no, sir.

Q Does the fact you started -- withdrawn.

You mentioned that Mrs. Beickman raised the issue of what race the gentleman was. Reflect on this, could it have been that you might have raised it? Is it possible?

A I recall, Mr. Murray, that it was raised by the other side.

Q In any event, there was no breakdown in the negotiations at that point?

A No, sir, absolutely not.

Q [illegible] negotiations which Mr. Duckett [illegible]?

A Yes.

Q And the price of $45,000 was reached subject to attorneys entering a contract?

A Correct.

Q And agreed -- subject to agreed terms at that point?

A Yes.

MR. MURRAY: That is all I have.

REDIRECT EXAMINATION

BY MR. HOFFMAN:

Q Prior to Mr. Duckett's offer of $45,000 were there any other offers for the purchase of that house acceptable to the sellers?

MR. MURRAY: Objection, improper redirect.

THE COURT: I will allow it.

A Would you repeat that?

Q Were there any other offers which were acceptable by the sellers prior to September of 1975, other than Mr. Duckett's offer?

A There was no offer in force at any time that was acceptable to other parties that I was negotiating with before then.

Q Other than Mr. Duckett's?

A Yes. I had an offer but it was rejected by

being too low.

Q The famous "September 19th" conversation, when did you return from your vacation?

THE COURT; September 23rd

THE WITNESS: Right.

Q Isn't it a fact that you recall the date because you remember you were still on vacation, isn't that correct?

MR. MURRAY: Objection.

THE COURT: Sustained.

Q Do you recall whether or not this conversation was while you were on vacation?

MR. MURRAY: Objection.

THE COURT: I will allow it.

A It is so difficult because Friday is my day off, since I work the weekends. I know it was on a Friday. I am 100 per cent sure it was on a Friday now with all this cross questioning.

Q This deposition, Page 35 --

A I remember what I said, I said sure as shooting.

Q And you remember you said: I was still on vacation?

A Yes.

Q Were you on vacation on October 3rd?

A On October 3rd I was off, not on vacation, no, sir.

MR. HOFFMAN: That is all, your Honor.

MR. MURRAY: No further questions.

THE COURT: Step down.

G E O R G E D U C K E T T , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q Are you presently employed?

A Yes, at Grumman Aerospace Corporation.

Q How long have you been so employed?

MR. MURRAY: Objection.

THE COURT: I will take it.

A Twelve years.

Q What is your position.

A Structural engineer.

Q What is your educational background?

A I received a Bachelors of Civil Engineer from Cooper Union and Masters from Brooklyn Poly.

Q [illegible]

A Yes.

Q Where do you presently reside?

A 4255 Colden, Flushing.

Q Would that be an apartment or family dwelling?

A Apartment house.

Q Did there come a time when you desired to try to buy a home?

A Yes.

THE COURT: How do you get to Grumman, do you drive every day?

THE WITNESS: Yes.

Q Did there come a time where you approached Teitelbaum Realty regarding the purchase of a home?

A Yes.

Q When?

A The first time would be June 22nd, a Sunday.

Q Do you recall who you talked to at that time?

A Yes, my wife and I went to Teitelbaum and spoke with Mr. Smetana.

Q What was the substance of that conversation?

A We told him what we were interested in as far as a house and the area which was Kew Garden Hills, specifically west of Main Street and we wanted a brick house.

Q Did he show you a house?

A Not at that time. During that conversation on the 22nd, Mr. Smetana said he did have some houses to show us and he could show us something in the afternoon later and to contact him. Late that Sunday afternoon we called him and he said, he made some excuses he didn't have a key or something like it was too late in the day and couldn't show us a house that day.

Q Did you see the house the following day?

A No, we made arrangements to see a house on the following Thursday.

Q On that day did you see the house?

A No. My wife spoke to Mr. Smetana and at that time he gave another excuse not to show us the house and that was the key incident. At that time he said he had been able to show us a house the following Sunday, the 29th of June.

Q On that day did you see the house?

A Yes.

Q What discussions did you have with Mr. Smetana that day?

[illegible]

area above the living room which was damaged by water and indicated as far as he knew that had been repaired and no longer a problem.

Another incident when we were in the kitchen he pointed to an area that was on the side of the kitchen where there was water damage and he said that will be taken care of by the selllers.

Q Was there a price mentioned?

A Yes. He said the asking price was $55,000 but people don't always get their asking price and indicated I probably could get the house for $50,000.

Q What did you tell him in regard to that offer?

A I made no offer at that time.

Q What did you do in -- what did you do then?

A I said I would get back to him as far as the house was concerned.

Q Did you return the call?

A Yes, that was the following day, a Monday, the 30th.

Q What was the substance of the conversation?

A I told him I was interested, however, because there was extensive work to be done I would have to get an estimator before I would make an investigation offer. I asked for time for this estimator and I would contact the

house.

Q What did you do with regard to purchasing that house?

A I contacted an appraiser and arranged to examine the house on a Wednesday which would be, I believe, the 2nd and --

Q Did there come a time when you made some counter offer regarding the purchasing of that house?

THE COURT: Did you examine it on the 2nd?

THE WITNESS: Yes, I was with the appraiser and Mr. Smetana.

Q Did you make a counter offer?

A Yes, after I received the report from the appraiser, I called Mr. Smetana on a Thursday and he was not in and I was told he was going to see his son in a car accident in the hospital and I told him I could get him the following Saturday since Friday was his normal day off.

Q Did you get in touch with him that following Saturday?

A Yes. At that time it was a short conversation. I said I was willing to offer $12,000 for the house and Mr. Smetana [illegible] a [illegible] offer and I agreed to.

THE COURT: [illegible] a [illegible]

Q [illegible] you said it wasn't [illegible]

A The context was that the top I --

THE COURT: Firm offer usually means are you willing to pay if it is accepted.

THE WITNESS: Why would I offer something if I am not willing to pay.

THE COURT: That's what a firm offer means. What you are saying is it a negotiable offer at top dollar.

THE WITNESS: We understood each other. There was no misunderstanding between the two of us.

THE COURT: Let us leave it where it is.

BY MR. HOFFMAN:

Q When you saw the house, was it vacant?

A Yes.

Q What occurred after that conversation, regarding your counter offer which you said was not firm for $42,000.

A Mr. [illegible] said he would convey that offer to the sellers and he also said he would get back to me in a couple of days.

Q Did he get back to you?

A More specifically he said he will call you the following day, Sunday or Monday. He should call and I got his [illegible] which also here in the afternoon on Sunday,

called his office.

Q If we can get a time frame? When would this have been?

A Can I look at a calendar?

This would have been approximately the 12th of July.

THE COURT: July 13th was a Sunday.

We will take a five minute recess.

(Recess)

Q I believe we stopped at around July 12th --

THE COURT: I believe you were up to July 13th.

Q What occurred on that date?

A I do not recall July 13th.

THE COURT: You called him on the 13th or the 12th and he said he would convey and get back to you and you said you would call him Sunday or Monday.

THE WITNESS: He said he would get back to me Sunday or Monday. Someone at the office said he wasn't in but took my number at work and said he would get back to me.

[illegible]

[illegible]

[illegible]

A The next day I initiated a call and I don't remember how it happened. He took my number and finally called later that day.

Q Did you remember the conversation you had with him?

A Yes. He said the owners haven't made any decision on my offer.

Q Did you say anything to Mr. Smetana in response to that?

A No. He said he would get back to me. I would say a period of three or four days went by, he didn't call and I called him.

Q At this point the offer is still $42,000?

MR. MURPHY: We are clearly willing to stipulate there was a series of negotiations.

THE COURT: Do not repeat. Don't ask the facts. Just ask him what was said in the next conversation.

Q What occurred?

A I stopped in his office Sunday morning around 11:00 o'clock, I asked him the processes and he said the [illegible] [illegible] decision, but both the daughters and son [illegible] to [illegible] in his office the following day to discuss the [illegible] and he would telephone call [illegible] the

21st at home after that discussion took place. The following day I didn't receive a call so I called him on a Tuesday and didn't reach him. I called again on a Thursday. I was told by the secretary that he wouldn't be available that day but I can try to get him the following Saturday or Sunday since Friday, the next day, was his day off.

Q Did you call him that following Saturday or Sunday --

THE COURT: Tell us when the next conversation was?

THE WITNESS: The next conversation was on a Friday, he called me.

THE COURT: What date was this, July 26th?

THE WITNESS: Friday, the 23rd. He said that Mrs. Erickson, the seller's daughter, was going to take care of the negotiations from here on in, after that he said race was an issue in the sale of the house. He said as far as he was concerned he would love to have me as a neighbor. I said so did I would get back to him. He also said that [illegible]

called him which would have been the 26th and made a counter offer of $44,000.

THE COURT: Then what happened?

THE WITNESS: He said he would convey that to the sellers and get back to me.

THE COURT: When did you next talk?

THE WITNESS: The next time I spoke to Mr. Smetana was I believe on the 3rd of August. My wife and I were in the process of looking for other houses and met him on the street by chance. He said: no wonder I can't get hold of you would I be in later and he said: I will call you, which would have been late Sunday, the 3rd. I never received a call on the 3rd that evening.

THE COURT: I asked when you next talked. Don't tell me all the times you failed to get together. When did you next talk?

THE WITNESS: The next time I talked with him was mid-week of August 3rd, and he said there is no change with the sellers, they are waiting for me to make a counter offer. He contacted me after I made [illegible] and [illegible] something [illegible] 48. At that time [illegible] [illegible].

BY MR. HOFFMAN:

Q What was your next conversation?

A The next conversation was the one in mid-week of August 3rd, when Mr. Smetana said the sellers were waiting for me to make a new offer. I said I will contact him next day.

The next conversation was the next day. I was not in a position to make another offer I told him because I wanted to get a better handle on the required repairs and said I would get back to him as soon as possible which I did in two days.

At that time I told him that my wife was insisting on certain things done to the house immediately, therefore I would make an offer of 45. He said I will convey that.

The next conversation he said the daughter is willing to go along with the 45, however, the son asked to hold me off. At the time he said he would get back to me on the 18th of August.

He never did, so on the 20th of August I called him and didn't get him, in the afternoon he called me. He said: I have just been in contact with [illegible] and you have a deal at 45,000.

[illegible] did you do then with [illegible] to [illegible]

purchase of the house?

A The next day I got in touch with you and told you we agreed on $45,000, a conventional mortgage. I was to put down 25 per cent.

Q Did there come a time when certain issues regarding terms in the contract arose?

A Yes. You specifically asked me what conditions did I want in the contract and the two things I stated was that Mr. Smetana agreed to fix the bathroom leak. Also at that time I said I wanted a guarantee on the appliances and wanted that to survive the closing.

Q What did I say?

A The next day or a short time later you said the sellers definitely did not want to do, have anything to do with repairs and you also said there would be no guarantee with any appliances.

Q At that point what were the issues regarding the terms of that contract?

THE COURT: Those two issues as far as you know, is that right?

THE WITNESS: Well --

THE COURT: Were there any other issues besides those two?

THE WITNESS: No.

Q Did you have any discussions with Mr. Smetana during this time?

A Yes. He called me.

Q That would have been when?

A Approximately the 19th. He suggested a way of getting around the business of theleak is try to get it fixed under a new insurance policy or taking over the old one. We didn't discuss the other condition.

Q What happened subsequent, regarding those conditions, what happened?

A I got in contact with you and told you his suggestion and you advised me that lost claims should be reported in a specific time and if I made the claim falsely that would be my responsibility.

Q What happened regarding the other issue?

A In my conversation with you I relaxed the condition that I wanted anything to be guaranteed passed the sale. I wanted some assurance that nothing major would happen to the house between the time of the contract and closing.

Q Did there come a time when these two issues were [illegible] which we decided on [illegible] in the contract?

A [illegible] that [illegible] the 24th of [illegible]

THE COURT: I just have August 19th the broker called and suggested the insurance policy and you didn't discuss No. 2. Now, did that happen on August 19th?

THE WITNESS: No, September 19th is when I said I relaxed the guarantee.

THE COURT: You didn't want to take the risk between the --

THE WITNESS: In the discussion with Mr. Hoffman I didn't want these things to be an issue so I agreed we would not make any other demands.

Q As of approximately the 19th, were you financially all for that house?

A Yes.

MR. MURRAY: Objection.

THE COURT: Sustained.

Q What were you earning at that time?

A Twenty three thousand dollars.

Q Subsequent to that date were there any new conditions raised by you either to myself or to Mr. Schneiman?

A No.

MR. [illegible] Further Question.

CROSS-EXAMINATION

BY MR. MURRAY:

Q When these issues you mentioned were raised, did your attorney tell you they were raised between discussions between him and counsel of the seller?

A Yes.

Q That was in a discussion to try to reach an agreed contract?

A Yes.

Q Did your attorney tell you he was told there was another buyer for the house at more favorable terms?

A At one time, yes.

Q When was that?

A Somewhere in the beginning of October.

Q Did your attorney tell you prior to that time even though another price wasn't reached, there were negotiations reached for a higher offer?

A No.

MR. MURRAY: May I borrow the Court's Exhibit, if I may?

Q I will show you this letter dated October [illegible] attorney to [illegible].

[illegible]

[illegible]

testified to and it is dated October 3rd. It took your lawyer two weeks to wait to talk to me about it.

A What is your question?

Q You say you told your lawyer on September 19th you withdrew all the clauses that stood in the way of buying the house?

A Yes, if that is the date of the letter that is when he did it.

Q The letter is dated October 3rd and it refers to you withdrawing these conditions. Does that mean your lawyer waited two weeks before he notified me that you were withdrawing these clauses?

THE COURT: Do you know that to be a fact?

THE WITNESS: I would have to infer that from the letter.

Q Weren't you trying to negotiate better terms throughout that period? Weren't you trying to have a guarantee that there wouldn't be any problems?

THE COURT: During September 19th to October 3rd, were you trying to get better terms?

THE WITNESS: From September 19th to October 3rd, I was trying to get better terms on a mortgage.

Q From talking about the grant of the house, weren't you trying to get a better deal than the deal?

A I had already told Mr. Hoffman the conditions were no longer part of my requirement. I assumed I had a house and my intention was to get a mortgage.

Q Can you explain the delay of two weeks in this letter?

A No.

Q Weren't you from late June, early July trying to negotiate a deal extensively?

A I testified to the negotiations, yes.

Q Isn't that why you didn't get this house because you haggled and didn't make a deal?

A I negotiated for the house during the time I testified to. Three offers, four, 42, 44 and 45, this took place, the first offer was made two weeks after I saw the house mid July and the 45 was agreed on August 20th.

Q Didn't you continued to negotiate until September 19th for better terms?

A There was a three week period that I was told by my lawyer that you were having difficulty getting a certified deed. I was constantly calling my lawyer, asking him for the delay.

Q Ask [illegible] delay, and he apologized for it --

MR. [illegible]: Objection.

THE COURT: [illegible]

Q Were you told Mrs. Silberman was out of town and that was the reason for the delay?

A Yes.

Q Your attorney advised you I contacted him and tried to get, negotiate a contract, did he tell you that?

A Yes.

Q After that point I still negotiated for a contract on terms?

A Yes.

Q You saw a house in late June and you negotiated for a couple of weeks delay until mid September?

A Yes, by mid September.

Q Didn't you run the risk for other buyers coming along and making an offer in the meantime?

A Yes.

Q Isn't that why the deal collapsed and not because of your race?

A I don't understand the question.

(Question read)

A How do I know.

Q [illegible] Didn't sell to [illegible] that you [illegible]?

[illegible]

1 against you but you are not sure about that?

2 A There is no doubt about that.

3 Q You know they discriminated against you?

4 A Because all conditions were met and yet I

5 never got a contract.

6 Q You were told your attorney and I were discus-

7 sing a contract over the phone?

8 A Yes.

9 Q Which you were not agreeable to?

10 A I had withdrawn everything by the middle of

11 September.

12 Q Prior to that time you were not agreeable to

13 the terms the sellers wanted?

14 A Yes, that is true.

15 Q If you feel you were discriminated against,

16 why did they keep lowering the price?

17 A I can think of a number of reasons.

18 Q Let me hear them.

19 A One of the reasons is I believe was once that

20 price was stated --

21 Q Why wouldn't they say the price is $5 and

22 [illegible]

23 [illegible]

24 [illegible]

25 [illegible]

Q If a person was truly discriminatory, why would they lower the price?

MR. HOFFMAN: Your Honor, I think that is up to the Court to decide.

THE COURT: No, I am interested in the witness's answer.

THE WITNESS: The property has no terms of value. I was willing to pay $45,000, as far as I knew there weren't other people making other offers.

THE COURT: If you had a house that you didn't want to sell to me and you had it listed at $55,000, if you wanted to discriminate against me, why would you lower the price from $55,000 to $45,000?

THE WITNESS: If you didn't negotiate with me and negotiating with other people, I would assume you are not negotiating with me for some reason. If you kept it at 55, which was something that no one wanted to pay for the --

THE COURT: Nobody else was in the picture during the July and August period, and why would someone want to discriminate, lower the price from 55 to 45 when there were no other bidders?

THE WITNESS: [illegible]

THE COURT: What [illegible]?

THE WITNESS: If they agreed on a figure of 45 or didn't ask for a binder, they would have an opportunity to get other buyers. That is a reason for lowering the price so it would be at a price higher than my offer.

THE COURT: They don't have to lower the price.

THE WITNESS: If they didn't I would make a standing offer.

THE COURT: What he is saying, why would someone discriminate against you and lower the price?

THE WITNESS: The motivation for the 45 -- once they said 45 I stopped looking at other houses and assumed the house was mine. The motivation could have been to stop me. They would probably have a motivation to get me to stop. It certainly did stop me from negotiating. I certainly don't yet have the house.

MR. MURRAY: I have no further questions.

I believe the last series of questions points out my argument, your honor.

MR. [illegible]: No further questions.

THE COURT: Step down.

MR. [illegible]: Your Honor, I will have [illegible]

THE WITNESS: If they agreed on a figure of 45 or didn't ask for a binder, they would have an opportunity to get other buyers. That is a reason for lowering the price so it would be at a price higher than my offer.

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MR. [illegible]: No further questions.

THE COURT: [illegible]

MR. [illegible]: Your Honor, I [illegible]

witness in a case the rule provides you must disqualify yourself from the case.

MR. HOFFMAN: I would withdraw. I thought there was an exception. If I could have ten minutes to reread it.

THE COURT: I will let you testify. I won't hold this against your client. You better educate yourself on the rules.

You may take the stand.

T H O M A S H O F F M A N , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. [illegible]:

Q What is your occupation?

A Attorney.

Q How long have you been an attorney?

A Since 1969.

Q Have you ever contacted by plaintiffs in this action in regard to acting in the capacity an attorney for the purchase of a house?

[illegible]

broker. After that I engaged in a series of meetings with the sellers in this matter.

I just have some dates here which I took from my calendar which I may refer to.

I then was told by Mr. Smetana that the office of Gerald Murray would be represented by the sellers and that Mr. Murray was out of town but Mr. Smetana's son who was working at Mr. Murray's office would be handling the matter until he got back.

However, when I called the office, the office said I would have to wait until Mr. Murray returned. I got a call. I was told Mr. Murray would return my call. However, I didn't get the call. However, on the following week I called and Mr. Murray said that -- I requested that, to set a date for a contract and to get a copy of the contract.

Mr. Murray said that he didn't have a certified copy of the deed and he would want a certified copy of the deed before he would draft the contract and he would get that to me by the end of the week. And he would get back to me by the end of the week.

I didn't receive a call so I called and he still didn't have a copy of the contract and I called the following week, and it went until the week after that.

early September when I called him and he indicated at that time, that point that he would be sending the contract out to Wisconsin or some other state.

(Continued on next page.)

Q To his counsel or his client?

A To his client. I then indicated -- I asked them to send me the contract at the same time, so that I could look at it and review it with my client so we could have some agreement before we send it out to Wisconsin. He indicated that he didn't want to do that. He wants to send it out to his client first.

He then insisted to talk about some of the terms that would be in the contract and I told him that we would want a standard as is clause, regarding --

THE COURT: This is the first part of of September, right?

THE WITNESS: Early part of September.

THE COURT: You don't have a date?

THE WITNESS: I have September 2nd, 1975, on a Tuesday.

THE COURT: Do you keep daily charge sheets in your office?

THE WITNESS: I have a diary.

THE COURT: I say, do you keep daily charge sheets?

THE WITNESS: No.

THE COURT: This is a diary somewhere?

THE WITNESS: This is a bar diary which I,

which I record calls I make and the calls I receive.

THE COURT: You have that with you?

THE WITNESS: No, I don't.

THE COURT: All right.

What conditions in the contract did you want?

THE WITNESS: Well, I wanted standard clause regarding -- that the house would be maintained in the same condition from contract closing to title closing. Expecially since this house, I was informed by my client, was vacant. And I specifically told Mr. Murray that I would want to make sure that the house doesn't fall down from contract closing to contract -- to title delivery.

I also indicated the other issue, which was the kitchen, which was the bathroom leak.

THE COURT: You wanted the seller to pick that up?

THE WITNESS: As soon as I mentioned that to Mr. Murray, right, I wanted the sellers to pick that up. And Mr. Murray said, "We got no deal." And I said, "Well, why don't you find out from your client [illegible] because it was my understanding that this had been [illegible] upon by the seller."

[illegible]

want some assurance that the property would be maintained from the contract closing to the title closing.

And he said, "Well, I don't think we have a deal. But I will communicate that with my client."

BY MR. HAIRSTON:

Q Did he indicate why he felt you wouldn't be able to make a deal?

A Well, he told me that they couldn't represent anything past the contract closing.

Q Okay.

So I thin told him that he's -- he told me that he would get back to me and when he didn't, I called him up and --

THE COURT: What was this?

THE WITNESS: This is -- I have around September 9th and I called him up again on September 11th and he still hadn't received any word from his clients on that date.

Q Just one point. Up to that point, during your negotiations or your conversations with Mr. Murray, and Mr. Murray at any time called you in regard to the matter you were negotiating or have you --

A Called me one time in the later September.

Q And --

A He never returned my calls.

Q So the other conversations took place at your impetus?

A Right.

Q Okay.

Go on.

A Now --

Q I believe you were at September 11th?

A Right. Finally I called him, the week of the 19th, I believe. And he indicated to me that they wouldn't go along with any of those two conditions. They definitely wouldn't go along with it. I --

THE COURT: The week of the 19th? The 19th is a Friday.

THE WITNESS: No. The -- it's not the week of the 19th. It is the week ending on Friday, the 19th.

THE COURT: Mr. Murray said he wouldn't accept either condition?

THE WITNESS: Right.

[illegible]

reasonable accomodation that that house would -- and I believe you mentioned to him, that a wall wouldn't cave in or that somebody wouldn't be throwing rocks through the window through the time of contract closing.

And I called Mr. Smetana to discuss the problem and I believe he offered to say: Look, I'll take a look at the house when we sign the contract and then we'll take a look at the house when we -- when -- prior to closing on the deed.

I got back with Mr. Murray and Mr. Murray said he still wouldn't go along with that. And on around the 19th of September, I called Mr. Murray advising him that we wouldn't press any of the conditions, we're ready, willing and able to close.

He said he'd get back to his clients. And get back to me. I got a call on September 23rd. He still had no answer from his client. I got a call September 25th. He still got no answer from his clients. And --

BY MR. HAMPSTON:

Q When you say you got a call?

A I called on [illegible] street. I'm sorry.

Q During that week or so, did he -- did

he actually call you at any time?

A I believe he called me on September 25th saying he still hadn't been able to reach his clients.

Q Okay.

A Finally on October 3rd, I had a conversation with him and I was kept -- I repeated to him I didn't understand the problem since we were willing and able to buy that house, without any conditions. And he indicated to me on that date that there may be a new purchaser interested in the house.

Q What date was this?

A On October 3rd. The date of my letter. And I expressed -- I told him I was very surprised that this was the first time I was told that there was a new purchaser interested in buying that house and I then told him, I said: Look, we'll meet a higher bonafide offer and he said he'd get back to his clients and then he -- and then I told him: Look, I think I'd better better start confirming this in writing. I told him --

MR. MURRAY: I'm sorry to interrupt. I notice counsel has been referring to notes. [illegible] he took it off his

THE COURT: Yes, you may.

MR. MURRAY: Thank you, your Honor.

BY MR. HAIRSTON:

Q Now --

A Those would be when I had conversations.

Q Now, you stated that at that point that --.

MR. MURRAY: Just one or -- the questions about these notes. When did you prepare those notes?

THE COURT: Wait a minute. You are not cross-examining.

MR. MURRAY: Can I have a voir dire on these notes?

THE COURT: He's not offering them into evidence.

MR. MURRAY: Oh.

BY MR. HAIRSTON:

Q Now, you stated that after October 3rd and during a conversation that you related to Mr. Murray that your client was ready, willing and able to purchase without any additional conditions and would meet higher bonafide offer, correct?

A [illegible] I was [illegible] situation. He [illegible]

Q [illegible] October 3rd,

you stated to Mr. Murray, did you not, that your client was willing to meet a higher bonafide offer without any other conditions? Is this not what you stated before?

A That's correct. I told him on October 3rd, that --

Q Okay.

Now --

THE COURT: Mr. Hoffman, did you have a power of attorney from your client when you made this statement?

THE WITNESS: Yes.

THE COURT: You did?

THE WITNESS: Not a written power of attorney. I talked to him about it.

THE COURT: You had a blanket power to offer any amount of money for the property?

THE WITNESS: I said we would meet a higher bonafide offer.

THE COURT: If he had an offer of $100,000, do you think that that statement was binding on your client?

THE WITNESS: I don't think it would have been bonafide.

THE COURT: I see. If they had had a bonafide

offer of $100,000, were you prepared to do that?

THE WITNESS: Well, not if it was $100,000.

THE COURT: You didn't have a blanket power of attorney in writing, a real estate statutory power when you made that statement, signed by your client?

THE WITNESS: That we would --

MR. HAIRSTON: Your Honor --

THE COURT: Wait a minute, counsel.

THE WITNESS: That we would meet a higher bonafide offer?

THE COURT: No. You didn't have a power of attorney, either a statutory power or a written formal power of attorney authorizing you to buy or sell real estate in behalf of Mr. Duckett, signed and acknowledged by Mr. Duckett in writing?

THE WITNESS: No.

THE COURT: All right.

MR. HAIRSTON: Your Honor --

THE WITNESS: I don't think one is required --

MR. HAIRSTON: Unless I'm mistaken, I may be mistaken but I think the New York Real Estate Law, brokers allow attorneys to negotiate, to engage in real estate negotiations.

THE COURT: Show it to me.

MR. HAIRSTON: I can't cite it but I'll be willing to supply it later, sir.

THE COURT: Show it to me.

THE WITNESS: Attorneys don't need a license to practice.

THE COURT: This is not a practice of practicing law. It is a question of binding one's client. You can't bind your client if you haven't got authority.

THE WITNESS: Attorneys can act as brokers.

THE COURT: Yes, but brokers can't bind somebody unless they have authority. Come on now, I practiced law before I came here.

MR. HAIRSTON: Okay.

I was going to ask -- I think your Honor has covered the area, but could you, in very concise terms state exactly what you meant when you stated to Mr. Murray that your client would be willing to meet a higher bonafide offer?

THE COURT: That is not necessary, counsel. I know what he is saying. I can read the language he has in his letter. I understand what he is saying. My question is, did he have authority?

THE WITNESS: Yes, I did.

THE COURT: Wait a minute, counsel.

THE WITNESS: I had oral authority. I did not have written authority.

THE COURT: I understand but you didn't have authority which would comply with the statute of frauds under the State of New York. You had no such authority, unless you had a signed power of attorny either in the statutory form -- and if you have any doubt about it, go look up the statutory form or under the -- a standard written form.

MR. HAIRSTON: Sir --

THE COURT: Your client could have disavowed what you said the next day. You'll agree with that?

THE WITNESS: Yes.

MR. HAIRSTON: Sir, may I point out that the --

THE COURT: Look, counsel, I understand the law in New York and I understand the extent of one's authority.

MR. HAIRSTON: I know that, sir. I was simply going to deal strictly with his testimony. It is a matter of evidence.

THE COURT: I want to know what the argument

of this is.

Go ahead. Ask any other additional questions you wish. He's a witness now.

BY MR. HAIRSTON:

Q You were relating -- that your client was willing to meet higher bonafide offer, simply relating the fact that your client was willing to negotiate further at a higher price for that house, if that is what it took to be -- to get the house?

A Well, the import of that was that the -- if there was -- he was telling me there was a higher offer. He didn't -- Mr. Murray did not mention the exact amount. I think he said several thousand dollars. We would be willing to meet that. If it was bonafide.

Q Okay.

Could you continue with your narrative concerning the negotiations and your dealings with Mr. Murray.

A Then he told me he would get back and I got back to him on October 7th and on October 7th he said that whether or not Mr. Buchanan would buy the house would not be conditioned on whether or not our new purchasers would take the an agreement to buy the house. And -- I'm [illegible] opinion, that now the

purchasing the house would be conditioned upon whether new purchasers would buy the house.

So I wrote him that letter on October 7th, I believe. And then I believe on October 9th, I called him and he told me that somebody had already purchased the house. For a higher price, not indicating the higher price.

Q So there was actually no response to your second offer or --

A Right. He would get back to me, he said.

Q Yes. Did he ever indicate during the several conversations that there was a possibility that your purchasers, your clients could purchase that house? Did he indicate by any language that he used on any of your conversations?

A After the 10th? No.

Q And the first time that he indicated to you that there were other purchasers, this took place on October the 2nd, was it not? Is that your testimony?

A Right.

Q Prior to that time, he had never mentioned to you the possibility of other purchasers?

A That's correct.

Mr. [illegible] I would object to this as being

repetitious, your Honor.

THE COURT: Yes. I understand. I am looking for papers.

MR. HAIRSTON: That is all.

CROSS-EXAMINATION

BY MR. MURRAY:

Q This bonafide offer, suppose I would have told you we would accept $75,000, would that have been all right with you, sir?

A As I mentioned, no, it wouldn't have been.

Q How about 65?

A It wouldn't have been.

Q How about 55

A As I mentioned --

Q Please answer my questions. You're now a witness, sir.

A No.

Q Fifty five also would not have been acceptable?

A Right.

Q Right.

Now, didn't you have conversations with me to the extent that the property [illegible] price was $45,000 [illegible] of the condition of the property and we could [illegible] you [illegible] over the price

lowered to include a reasonable amount of money for your clients to repair the premises?

A Prior to the 19th?

Q Yes.

A Right.

Q And yet, your client persisted in asking for these guarantees up until that date, is that correct, sir?

A As I indicated to you, I asked you, since the promise was made to get back to our clients.

Q I understand, sir. Please answer the question.

A No, he didn't persist.

Q I'm talking about up until September 19th.

A No.

Q Oh. He withdrew then earlier, like August?

A No. It wasn't persistence.

Q What do you call it, sir?

A I called up once and I said there were the terms, these were concerns --

THE COURT: You didn't withdraw then before the 19th?

THE WITNESS: No, I did not. I said you said.

THE COURT: He didn't agree to the deal with the details. You said on the 19th --

THE WITNESS: It was only two conversations.

THE COURT: The conditions remained until the 19th?

THE WITNESS: That's correct.

THE COURT: Prior to that on September 2nd, you posed the conditions and he said you don't have a deal?

THE WITNESS: Right.

THE COURT: So at that moment, Mr. Murray said the deal is off?

THE WITNESS: No. Because I then said: Why don't you first contact your clients before you reject it and he said he would and get back to me. And when he got back to me and said that his clients rejected it, then I withdrew the offer. The term.

BY MR. MURRAY:

Q You were told on some date that there was another buyer for a higher price without those conditions, is that correct, sir?

A That's correct. You told me that.

Q [illegible]

A [illegible]

Q [illegible]

Q Did I ever tell you that my clients wouldn't sell to your clients because of their race?

A No.

Q Did I ever tell you any -- did I give you any inference, any facts from discussions to lead you to believe that my clients were discriminatory against your clients?

A Not from you.

Q And in fact didn't we negotiate at arms length in a contract, sir?

A Well, every term I raised you rejected.

Q Because he was black? Or because he wanted too much for the price?

A Are you asking me?

Q Yes, sir.

A Because he was black.

Q What proof do you have to substantiate that accusation, sir?

MR. HAIRSTON: Objection, your Honor.

A What proof?

Q Yes, sir.

THE COURT: I'll allow it.

A My opinion.

Q What proof, not your opinion.

A Because he was greedy, willing and able to

buy that house on September 19, 1975.

Q By then another buyer had come along, right?

A I don't know that.

Q Well, --

A The house wasn't sold until October 9th, as -- from what the contract shows.

Q There may have been negotiations going on when I said there was no deal from that point on? With many other purchasers, isn't that true?

A There may have been.

Q. And as well we had the right to, black, white, orange, pink, yellow, right?

MR. HAIRSTON: Objection, your Honor. I think he's coloring the record with a lot of hypotheticals.

THE COURT: That's correct, Mr. Hairston.

If a condition is imposed as a material condition, it is imposed by a buyer to a seller in alteration of the original terms, and the buyer -- and the seller rejects it and says no, there is no reason during that -- from the moment that condition is imposed right up until the later date that they don't go on negotiating with somebody else.

MR. HAIRSTON: There isn't a material condition

THE COURT: That is for me to determine. That is not for you to --

MR. HAIRSTON: My objection, sir, is related to this gratuitous hypotheticals.

THE COURT: No. He asked him, didn't he have the right, didn't the seller have the right to negotiate with other people and Mr. Hoffman said yes.

MR. HAIRSTON: But on the other hand, he's posing alternative situations.

THE COURT: Mr. Hoffman agreed. Your own witness agreed.

MR. HAIRSTON: Okay, sir. Thank you.

MR. MURRAY: I have no further questions. I think the facts speak for themselves, your Honor.

THE COURT: All right.

You may step down.

Anything further, Mr. Hoffman?

MR. HOFFMAN: What I would like to do is add as an exhibit the certified copy of the census data as to that area.

THE COURT: All right.

MR. HOFFMAN: But I won't be able to until this afternoon.

THE COURT: All right.

MR. HOFFMAN: Other than that, we rest.

MR. MURRAY: At this time, your Honor, if he submits -- even given the best inference to any census information he may have, it is respectfully submitted that in this house, by -- even by their own admissions, there was no deal here. There was no discrimination.

It is absurd to think that a seller would lower the price $10,000 when he was discriminatory.

I make my motion that they have not made out a prima facie case and ask the Judge to dismiss it without any further delay.

THE COURT: Mr. Hoffman, tell me how you show, unless there is some sort of stipulation between you and Mr. Murray of which I am not aware, how you have shown that Mrs. Silberman has discriminated against anybody?

MR. HOFFMAN: I think --

THE COURT: Not Mrs. Brickman, a son or Mr. Murray or anybody else but how Mrs. Silberman discriminated against anybody.

MR. HOFFMAN: I think we can establish of [illegible] Mrs. Silberman [illegible] the [illegible] Mrs. Silberman.

THE COURT: I don't know the proof shows that.

MR. HOFFMAN: I think Mr. Smetana testified that Mrs. Brickman possibly could have been the one who put the house up for sale and was the one negotiating.

THE COURT: Where is the authority?

MR. HOFFMAN: There would be obviously apparent authority.

THE COURT: From where?

MR. HOFFMAN: She was the one who indicated that --

THE COURT: If I go around and say I have authority to sell your house, Mr. Hoffman, and bind you with all my statements, and do all these things, and -- does that give me the right to discriminate and charge you with it and so on?

MR. HOFFMAN: Well, I think if --

THE COURT: If I make the statement? I make the statement. You don't do anything. You are lying in the hospital sweeplace.

MR. HOFFMAN: I don't think -- I am not relying just on that statement, your Honor. I am relying on -- and I was mistaken a total misunderstanding on this, which I thought Mr. Smetana, especially

1
2 the leading case or a leading case in Bush vs. Kain,
3 stated that there are five factors which the
4 plaintiff --
5 THE COURT: I am talking about authority now.
6 MR. HOFFMAN: Well, I think the factors,
7 however, were as far as even Mrs. Silberman is con-
8 cerned, is one, that this house was placed on the
9 open market, two, that we were willing to purchase
10 the property on the terms specified by the owner as
11 of September 19th, that, three, that the plaintiffs
12 communicated this willingness to the defendant which
13 Mr. Smetana testified to, and I testified to and that
14 the defendant refused to sell under those terms.
15 Once you have that, you have a prima facie
16 case and the burden then shifts to the defendant
17 to show that the reason they did not sell as of
18 September 19th was not because of race.
19 As your Honor knows, it is almost impossible
20 to indicate that -- to prove discrimination if we're
21 going to look for: I did not sell to you because
22 you're black. We have to do this circumstantially.
23 THE COURT: I am not arguing that point. I'm
24 trying to [illegible] the evidence here on
25 your [illegible] of [illegible] kind of [illegible],

Mr. Smetana is not sure whether he had a conversation or not but he thinks he had it with either the mother or the daughter but, in any event, the price was listed with him for $55,000.

And then Mr. Smetana said he had various conversations with the daughter and the son by which it was lowered to $45,000. He never had a conversation again with the mother, that I was able to ascertain.

And then he said he negotiated this deal for $45,000 and then there were these conditions that were bandied about and then there was a rejection on September 19th, presumably by Mrs. Silberman, of the deal that had been made and then there is a higher price negotiated and for which the house was sold at some subsequent date.

The difficulty I have is that Mrs. Silberman isn't tied into any of this except the initial listing of the property at $55,000. That is the proof that I have.

MR. HOFFMAN: That's correct. And what I am saying is that we have met the prima facie burden of having been able --

[illegible] You haven't got anything from -- to show [illegible] Silberman -- I am not talking

about her daughter or son or Mr. Smetana or anybody else, agreed ever to have anything less than $55,000.

MR. HOFFMAN: Well, the broker was acting as their agent.

THE COURT: Even the broker, when his testimony -- he didn't say he had any authority from Mrs. Silberman for anything -- for anything less from Mrs. Silberman than $55,000.

MR. HOFFMAN: But he would have apparant authority.

THE COURT: Well --

MR. HOFFMAN: You can assume.

THE COURT: I am not saying that he might not have a cause of action a, inst the broker for having -- I am saying that at the moment -- I am talking about as a technical matter of proof, what you've produced here, have I got anything more than a listing by Mrs. Silberman at $55,000? To deal with?

To go on to your next three or four conditions, which you say make out a prima facie case. Bear in mind we are not dealing here with a mortgage for a [illegible]

[illegible]

[illegible]

a prima facie case and then on balance I've got to determine whether the balance of hardships and whether the transitional rules of a preliminary injunction tip in your favor, so to speak.

But we are not even at that point now. We are at the question of whether you made out a prima facie case even to warrant my putting them to any kind of proof on the preliminary injunction motion.

My question is, where do I get -- how do I get Mrs. Silberman below $55,000?

MR. HOFFMAN: Well, I think that she was acting through agents. Mr. Smetana, Mr. Murray and her daughter. And --

THE COURT: But Mr. Smetana didn't say he had any agency authorization from her.

MR. HOFFMAN: He was told to sell that house in her behalf.

THE COURT: Mrs. Brickman said that: I am taking over negotiations and Mrs. Brickman said that: I've told Mr. Smetana I am taking over the negotiations.

What you are doing is changing -- you are not charging Mrs. Silberman with the negotiation.

MR. [illegible]

THE COURT: [illegible]

1

2 you didn't. Which you have charged Mrs. Silberman.

3 MR. HOFFMAN: Mrs. Silberman's affidavit --

4 this is a problem that may shed some light.

5 THE COURT: Maybe I have overlooked something.

6 MR. HOFFMAN: Your Honor, if I may just add,

7 for the purpose of this argument, we would want to

8 include the exhibits which have already been entered

9 into by the defendants.

10 In other words, the contract. And the Court

11 can look to see whether the conditions which were

12 rejected were not in fact included in the new

13 contract which they entered into.

14 MR. MURRAY: Which exhibits are you referring

15 to?

16 MR. HOFFMAN: The contract, the new contract.

17 MR. MURRAY: It hasn't been introduced into

18 evidence.

19 MR. HOFFMAN: It's part of the affidavit.

20 THE COURT: The new contract?

21 MR. HOFFMAN: Part of the affidavit.

22 MR. MURRAY: I don't know.

23 What affidavit are you referring to, sir?

24 THE COURT: [illegible]

25 MR. HOFFMAN: The court. [illegible]

THE COURT: You attached it yourself. I have to take that into consideration.

MR. MURRAY: I can tell your Honor, of course you can read it and confirm it. I'd forgotten it was put in. I beg your pardon. Those conditions are not in the contract. Your Honor can, if you want to take a short recess and read it.

THE COURT: Those conditions are what?

MR. MURRAY: Those conditions that he wanted are not in the contract.

THE COURT: I understand that.

MR. MURRAY: I'm sorry.

THE COURT: All right. If I get over that -- I'm going to reserve on this authority question anyway but I must say I am very troubled by it.

MR. HOFFMAN: I don't think the affidavit of Mrs. Silberman denied --

THE COURT: Yes, in a sense she does very definitely.

MR. HOFFMAN: She denies discrimination and she says that I could not agree to the terms of the contract of sale with the defendant. The plaintiffs were making demands that I amend denies to the, or other, or [illegible], or [illegible].

Finally, the union party would be willing to

1 buy the premises for a higher price. That would
2 only indicate to me that maybe she never authorized
3 the lower price. If you take her -- if I take
4 her affidavit at face value.
5 I would just say that --
6 THE COURT: Let us get on with the rest of
7 your argument. I want you to know that troubles
8 me. What about the second question, which was
9 raised when Mr. Duckett was on the witness stand?
10 Let us take all of the facts. Let us assume
11 that Mrs. Silberman did authorize her daughter and
12 did authorize the broker to say there was a deal at
13 $45,000.
14 How do you say that Mrs. Silberman, given
15 that authorization, supposing -- let's suppose,
16 for the sake of argument, that she wrote out
17 authority and said, okay, daughter and okay broker,
18 you'll have authority to sell this -- to lower the
19 price from $55,000 to $45,000, to meet Mr. Duckett's
20 offer.
21 How do you call out discrimination about
22 that?
23 [illegible]
24 [illegible]
25 [illegible]

1 deposition, that there was community pressure.

2 MR. MURRAY: Your Honor, I object to that.

3 That is not in evidence.

4 THE COURT: That is not in the record.

5 MR. HOFFMAN: I thought --

6 THE COURT: That is not in the record. My

7 question to you is this, Mrs. Silberman, according

8 to the testimony in the record, was out in Wisconsin

9 or some such place. From what I could gather, moved

10 into some sort of nursing old age home.

11 MR. HOFFMAN: That is what I was told.

12 THE COURT: Mrs. Silberman -- you are not

13 charging Mrs. Brickman. You are charging Mrs.

14 Silberman with discrimination. Mrs. Silberman lists

15 the price, according to your testimony, and according

16 to what you ask the Court to believe, was broker --

17 at $55,000.

18 Mr. Duckett, who is described as a nice young

19 man who works for Grumman Aircraft Company and is a

20 very good prospective buyer, comes along and offers

21 40 and the two parties negotiate down to $45,000 and

22 Mrs. Silberman reduces her price according to what

23 [illegible] Court believes, with full knowledge

24 [illegible]

25 [illegible]

1 Where do you get discrimination out of that?

2 MR. HOFFMAN: Well, we get the discrimination

3 that according to the cases, once we establish

4 that we are -- were ready, willing and able to pur-

5 chase that property.

6 THE COURT: You were ready, willing and able

7 on August the 20th, to purchase that property

8 as was the buyer, ready, willing and able to sell

9 you on August the 20th.

10 MR. HOFFMAN: Right.

11 THE COURT: Both parties had agreed to a

12 purchase price?

13 MR. HOFFMAN: Right.

14 THE COURT: And I say, at that point, forgetting

15 about what happened afterwards, how do you spell

16 discrimination out of -- at that point?

17 MR. HOFFMAN: At that point?

18 THE COURT: If you know, right? If you know?

19 MR. HOFFMAN: I would say at that point --

20 THE COURT: In fact, a fortiori, it's non

21 discriminatory because she lowered the price.

22 Isn't that right?

23 MR. HOFFMAN: At that point, no.

24

25

THE COURT: So two weeks later when you finally catch Mr. Murray who has been gallivanting around in Spain you say to him: I want to giveyou the conditions of the contract. I want to put two conditions in the contract. Which according to Mr. Murray, the buyer had envisaged would be covered by the lower price.

At least that is what you agreed to on your cross-examination. That was one of the things that would be covered on the lower price.

MR. HOFTMAN: That is what he said.

THE COURT: That is what he told you?

MR. HOFTMAN: Right.

THE COURT: That is his version of it?

MR. HOFTMAN: Right.

THE COURT: So you interposed two conditions which the buyer hadn't agreed to. The seller hadn't agreed to at this point. Mrs. Silbaman hadn't agreed to. Those -- at which time he says, no deal. You said: Please at least transmit this new offer to the -- to your client. Which he does.

And then when you finally get back together [illegible]

[illegible]

1

2 MR. HOFFMAN: You get discrimination out of

3 that is that -- and I'm sure as the Court knows,

4 because I'm sure the Court has dealt with a lot of

5 contract closings and title closings --

6 MR. MURRAY: I object to these innuendoes.

7 THE COURT: He's arguing now.

8 MR. MURRAY: Sorry.

9 THE COURT: He's making an argument.

10 MR. HOFFMAN: You enter into a contract

11 closing, generally you sit down, in a conference

12 room and there are terms which you throw back and

13 forth.

14 Now, a term may be proposed. It may not

15 be this. You are just negotiating. There are

16 concerns, which are generally resolved right away,

17 right at a contract closing. Because of this

18 problem, these conditions had to be communicated

19 back and forth. I don't think there would have

20 been a problem if there was a contract closing.

21 THE COURT: That is just your opinion, Mr.

22 [illegible]

23

24

25

walk away from the deal.

MR. HOFFMAN: We took it out --

THE COURT: Wait a minute. I am talking about now on September 2nd or whenever it was you put those conditions -- put in new conditions, in effect at least in Mr. Murray's mind you put in new conditions.

MR. HOFFMAN: They were just standard conditions.

THE COURT: In your eyes they were not. In his eyes they were.

MR. HOFFMAN: Right.

THE COURT: I'm trying to get -- was that discriminatory for him to make that statement at that point?

MR. HOFFMAN: I think without --

THE COURT: There was no deal.

MR. HOFFMAN: Without relating it back to his client, to be honest with you, made me suspicious at that time. Because generally I just said, those are the things we want. That's what they want. [illegible]

[illegible]

I told him I'm sure we could work out, that the -- that the house stands up when the title is delivered. That the house is standing and in fact if you look at the contract now, which they have as an exhibit, they have provisions for that which I would have been very agreeable to.

THE COURT: I understand all that. But I'm saying that at this point what you are doing is asking for two conditions which he said were not acceptable to his seller.

MR. SOFFER: I feel at that point, at that point they didn't want to -- look back at it, at that point they didn't want to sell to Mr. Duckett.

(Continued on next page.)

THE COURT: If you had not imposed those two conditions is there any doubt that your deal --

MR. HOFFMAN: Yes, I think at that point that deal was not going through.

THE COURT: What evidence do you have that you have produced here, not that you have in your mind.

MR. HOFFMAN: There is no evidence that we have produced here.

THE COURT: So then on September 19th, the date when you say you made the call to him and got hold of him again, he said that your counter offer where the conditions had been rejected and you said in effect: We withdraw the conditions and make a new offer.

Now, certainly from the point of time when he went back to Mrs. Silberman, or to whatever authorized agent: Mrs. Silberman had at that point, in the between September 2nd and September 19th, with your counter offer and conditions attached and they rejected it and told him to return it, [illegible]

else?

MR. HOFFMAN: Depending on their reasons.

THE COURT: Let us assume that their reason is because of the conditions, as a legal matter.

MR. HOFFMAN: Then it is a valid, they were validly free to go.

THE COURT: Then you say, okay, September 19th resubmit my offer and let us assume Mr. Murray did and between September 19th and October 3rd, they had found a new buyer and they at this point say that new buyer is willing to pay us more because we do not have to pay a broker agency commission plus the price.

Are they not free as a legal matter to accept that new buyer?

MR. HOFFMAN: Not if they were accepting that new buyer because they didn't want to sell to Mr. Ducworth because of his race.

THE COURT: I am talking as a legal matter.

MR. HOFFMAN: Yes, I agree with the Court.

THE COURT: [illegible]

ahead until the conditions were attached from all of the proof whether you have established there were racial motivations.

MR. HOFFMAN: That is the issue, your Honor. If we have established a prima facie case. You use the word "conditions". These were terms which were negotiable, which are always negotiated in contracts.

THE COURT: Sure they are but they are conditions. When you go back and say, there were sufficient conditions, the leak in the bathroom was there and warranted discussions, whether the insurance company would pick the tab up, they might pay two or three hundred dollars from the insurance company, as I recall the testimony, and the rest would be put on either the buyer or seller.

We are talking about shifting the risk with respect to some portions of the price. What is a condition.

MR. HOFFMAN: As of the 15th, there were no conditions.

THE COURT: [illegible]

[illegible]

was looking for a buyer early October, late September, why weren't they accepting that clean contract as of the 19th.

THE COURT: Because they may have had every indication. I haven't heard their case yet. They may have had every indication from that buyer he was willing to pay far more than your client and legally they were free to take it.

MR. HOFFMAN: I agree with you. I think they can show that they did not reject this contract or offer because of Mr. Prochett's race but for other reasons. I think, however, they do have the burden of showing that.

THE COURT: I will reserve decision on this motion but I think you have a tough sad. You ought not kid yourself. If you apply any other rule you could have every case where there was in effect a new contract offered and didn't accepted, you could kick this thing. [illegible]

[illegible]

mother but in the proof I have before me, I don't see how I can attribute it to the mother.

MR. HOFFMAN: We can just say she was acting as an agent.

THE COURT: You can say it but I don't have the proof. I have the proof what she ostensibly did but I don't have anything from Mrs. Silberman's affidavit. The broker's testimony is -- well, I think he said he had his first conversation with Mrs. Silberman saying he was going to list so I suppose I could draw the inference there.

MR. MURRAY: Even if that conversation is pertinent authority ---

THE COURT: I understand.

MR. MURRAY: The price was lower and I submit my motion to dismiss. They haven't proved a prima facie case.

THE COURT: If we -- the trial of the case I would be inclined, I might call calling, if we were on the formal trial of the case, but on a motion for a directed verdict, I am inclined to [illegible]

in here before me and I am inclined to reserve to her whatever other evidence you wish, if any, to put in. You may not wish to put in any.

MR. MURRAY: I may not because of my strength on the argument, I feel there is no proof at all.

THE COURT: I will let you have the lunch hour to consider it.

(Continued on next page.)

THE COURT: You may be seated, ladies and gentlemen.

MR. MURRAY: We decided, with the Court's permission, we are going to rest. We are not going to produce any witnesses on the motion --

THE COURT: All right, now, gentlemen, there are two ways in which we can proceed at this point. I can give you some additional time if you wish to submit findings of fact and conclusions of law, or some sort of post-trial memorandum stating what you think the posture of the case is, or you can leave it in my lap.

MR. MURRAY: I prefer to leave it in the Court's hands as it is basically a motion for a preliminary injunction.

MR. HOFFMAN: I would like some time to prepare in conjunction with my memorandum -- say to put it together -- with the facts as I see they come out here.

THE COURT: Since you are the plaintiff I [illegible] in no objection.

[illegible]

likelihood of the property being sold?

MR. MURRAY: I have in the courtroom the attorney for the new buyer. I took the liberty of bringing him in --

MR. RIBOWSKY: I would like to ask you a question, your Honor. There is no likelihood of the title closing within the next week? In fact, they will not close within the next two weeks.

MR. MURRAY: Certainly, we would agree to hold it in abeyance for the next two weeks.

MR. HOFFMAN: Yes, I will be agree.

THE COURT: So if a question of two weeks -- it may be necessary for me to have another week after that.

MR. MURRAY: Three weeks. Fine.

MR. HOFFMAN: Yes.

THE COURT: If Mr. Hoffman gets his materials to me by the 20th -- the 22nd's Thanksgiving -- I should have it in -- I should have my decision by the 1st, if I can, covering any enforcement alternatives. Just don't give me too much to digest at the last minute.

1 Mr. Hoffman has a theory of law that he wants me to
2 consider, and that is the reason I raise this
3 question ---
4 MR. HOFFMAN: You would want me to have my
5 brief ready by when?
6 THE COURT: A week from today. Then he will
7 have a week after that. Then since it is the two of
8 you against me, I might take ten days.
9 Bear in mind, gentlemen, that the rule as I
10 see it, and you may dissuade me --- but I am reading
11 from a portion of my own opinion in GSM Dynamics, Inc.
12 v. "John Doe" 381 F. Supp. 1088. It is a case in a
13 preliminary injunction where I said --- and I think it
14 is still good law --- that it is well-established law
15 that Plaintiff seeking a preliminary injunction
16 assumes the burden of demonstrating a combination of
17 probable success and the possibility of irreparable
18 injury. What he has raised serious questions going
19 to the merits and that the balance of hardships slip
20 sharply in his favor.
21 One of these two combinations, that is your
22 burden.
23
24
25

THE COURT: I think it is page 1094.

MR. HOFFMAN: 1094?

THE COURT: Yes. That is based on Starke v. New York Stock Exchange, 466 F. 2d 743, which is a Second Circuit case in 1972, and as far as I know that is the rule of this circuit with respect to preliminary injunctions in all cases.

MR. HOFFMAN: Your Honor, if I may, I had obtained a United States Department of Commerce publication which will give you in conjunction with the map ---

THE COURT: A breakdown.

MR. HOFFMAN: -- of the population in that area. This was quite voluminous. What I would like to do is give the Court a copy ---

THE COURT: Well, show it to him and see if he is satisfied. We can mark it in evidence as Plaintiff's Exhibit 2, the copy.

MR. HOFFMAN: It would be only one or two pages.

MR. MURNAY: I would like to object on two grounds. One, I do not believe that a compilation copy and, naturally, most importantly, this is 1970, [illegible] New York City --

1 MR. MURRAY: All right, then I will withdraw
2 my objection.
3 THE COURT: It goes to the weight, really.
4 MR. MURRAY: That is why I mention this. Then
5 I won't object. But I just wanted to point it out.
6 The weight is very dubious. Of course, I am not an
7 expert in statistics, your Honor, but these things are
8 based on averages. They don't ask everybody. They take
9 a sampling.
10 THE COURT: Well, I do not think it is quite
11 as great as the ESA poll that they took.
12 MR. HOFFMAN: Would you have any objection to
13 the copy?
14 MR. MURRAY: Go, I have no objection to the
15 copies for the Court's convenience so he doesn't have
16 to wade through 3,000 pages.
17 THE CLERK: Plaintiff's Exhibit 2 in evidence.
18 (Document referred to was received and marked
19 Plaintiff's Exhibit 2 in evidence.)
20 MR. HOFFMAN: I appreciate the time you have
21 taken on the case.
22 THE COURT: That is what I am here for.
23 [illegible]
24
25

THIS AGREEMENT, made the eighth day of October, nineteen hundred and seventy-five
BETWEEN

EVE S. SILBERMAN, residing at 141-01 77th Avenue
Flushing, New York

hereinafter described as the seller, and MENAHEM MENDEL BEER and FRADA BEER
residing at 150-40 77th Avenue
Kew Gardens, New York as purchasers.

hereinafter described as the purchaser,

WITNESSETH, that the seller agrees to sell and convey, and the purchaser agrees to purchase, all that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 77th Avenue distant 305.09 feet westerly from the corner formed by the intersection of the northerly side of 77th Avenue with the westerly side of Vleigh Place, as said streets are laid down and shown on a certain map entitled, "Map of Property belonging to Queens Valley Development Corporation, situated in the 3rd Ward, Borough of Queens, City of New York," surveyed March 6th, 1939 by Leonard C. L. Smith Engineering Co., filed in the office of the Register of Queens County on March 31st, 1939 as Map No# 7117; running thence northerly at right angles to 77th Avenue, 112.93 feet; thence westerly on a line forming an interior angle of 93 degrees 28 minutes 10 seconds with the last mentioned course 26.05 feet; thence southerly at right angles to 77th Avenue and part of the distance through a party wall, 114.51 feet to the northerly side of 77th Avenue; thence easterly along the northerly side of 77th Avenue, 26 feet to the point or place of beginning.

Said premises being known as and by street number 141-01 77th Avenue, Kew Gardens, Long Island, New York.

TOGETHER with and subject to an easement and right of way recorded in Liber 4153 cp. serial# 1926 and Liber 4239 cp. 250.

TOGETHER with all the right, title and interest of the party of the first part, if any, of, in and to 77th Avenue lying in front of and adjoining said premises to the centre line thereof.

This sale includes all right, title and interest, if any, of the seller in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining said premises, to the center line thereof, and all right, title and interest of the seller in and to any award made or to be made in lieu thereof and in and to any unpaid award for damage to said premises by reason of change of grade of any street; and the seller will execute and deliver to the purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

SIXTY THOUSAND and 00/100 ($60,000.00) Dollars, payable as follows:

FOUR THOUSAND FIVE HUNDRED and 00/100 ($4,500.00) Dollars

on the signing of this contract, by check subject to collection, the receipt of which is hereby acknowledged;

FOURTY THOUSAND FOUR HUNDRED and 00/100 ($40,400.00) Dollars

in cash or good certified check on the delivery of the deed as hereinafter provided;

by taking title subject to a mortgage now a lien on said premises in that amount, bearing interest at the rate of per cent per annum, the principal being due and payable Dollars

by the purchaser or assigns executing, acknowledging and delivering to the seller a bond or, at the option of the seller, a note secured by a purchase money mortgage on the above premises, in that amount, payable Dollars

per annum payable together with interest at the rate of per cent

Any bond or note and mortgage to be given hereunder shall be drawn on the standard forms of New York Board of Title Underwriters for mortgages of like lien; and shall be drawn by the attorney for the seller at the expense of the purchaser, who shall also pay the mortgage recording tax and recording fees and pay for and affix to such instruments any and all revenue stamps that may be necessary.

If such purchase money mortgage is to be a subordinate mortgage on the premises it shall provide that it shall be subject and subordinate to the lien of the existing mortgage of $, any extensions thereof and to any mortgage or consolidated mortgage which may be placed on the premises in lieu thereof, and to any extensions thereof provided (a) that the interest rate thereof shall not be greater than per cent per annum and (b) that, if the principal amount thereof shall exceed the amount of principal owing and unpaid on said existing mortgage at the time of placing such new mortgage or consolidated mortgage, the excess be paid to the holder of such purchase money mortgage in reduction of the principal thereof. Such purchase money mortgage shall also provide that such payment to the holder thereof shall not alter or affect the regular installments, if any, of principal payable thereunder and shall further provide that the holder thereof will, on demand and without charge therefor, execute, acknowledge and deliver any agreement or agreements further to effectuate such subordination.

If there be a mortgage on the premises the seller agrees to deliver to the purchaser at the time of delivery of the deed a proper certificate executed and acknowledged by the holder of such mortgage and in form for recording, certifying as to the amount of the unpaid principal and interest thereon, date of maturity thereof and rate of interest thereon, and the seller shall pay the fees for recording such certificate.

Said premises are sold and are to be conveyed subject to:

1. Zoning regulations and ordinances of the city, town or village in which the premises lie which are not violated by existing structures.

2. Consents by the seller or any former owner of premises for the erection of any structure or structures on, under or above any street or streets on which said premises may abut.

3. Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway.

All notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the Departments of Housing and Buildings, Fire, Labor, Health, or other State or Municipal Department having jurisdiction, against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same, and this provision of this contract shall survive delivery of the deed hereunder. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

This clause is usually omitted if the property is not in the City of New York.

If, at the time of the delivery of the deed, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller, upon the delivery of the deed.

The following are to be apportioned:

~~(1) Rents, if any, when collected. (2) Interest on mortgage.~~ (3) Premiums on existing transferable insurance policies or renewals of those expiring prior to the closing. (4) Taxes and sewer rents, if any, on the basis of the fiscal year for which assessed. (5) Water charges on the basis of the calendar year. (6) Fuel, if any.

2

[illegible] the title shall accrue before the tax rate is fixed, the apportionment of taxes shall be upon the basis of the [illegible] the next preceding year applied to the latest assessed valuation.

If there be a water meter on the premises, the seller shall furnish a reading to a date not more than thirty days prior to the date fixed for closing title, and the unfixed meter charge and the unfixed sewer rent, if any, based thereon for the intervening time shall be apportioned on the basis of such last reading.

The deed shall be the usual bargain and sale with covenants against grantor's acts

deed in proper statutory short form for record and shall be duly executed, acknowledged, and have revenue stamps in the proper amount affixed thereto by the seller, at the seller's expense, so as to convey to the purchaser the fee simple of the said premises, free of all encumbrances, except as herein stated, and shall also contain the covenant required by subdivision 5 of Section 13 of the Lien Law.

This clause should be omitted if the property is not in the City of New York

At the closing of the title the seller shall deliver to the purchaser a certified check to the order of the Director of Finance for the amount of the Real Property Transfer Tax imposed by Title I of Chapter 46 of the Administrative Code of the City of New York and will also deliver to the purchaser the return required by the said statute and the regulations issued pursuant to the authority thereof, duly signed and sworn to by the seller; the purchaser agrees to sign and swear to the said return and cause the said check and the said return to be delivered to the City Register promptly after the closing of the title.

The seller shall give, and the purchaser shall accept, a title such as the Board of Title Underwriters will approve and issue.

All sums paid on account of this contract, and the reasonable expenses of the examination of the title to said premises and of the survey, if any, made in connection therewith are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

All fixtures and articles of personal property attached or appurtenant to or used in connection with said premises are represented to be owned by the seller, free from all liens and encumbrances except as herein stated, and are included in this sale without limiting the generality of the foregoing, such fixtures and articles of personal property include plumbing, heating, lighting and cooking fixtures, air conditioning fixtures and units, ranges, refrigerators, television antennas, bathroom and kitchen cabinets, mantels, door mirrors, venetian blinds, shades, screens, awnings, storm windows, window boxes, street doors, mail boxes, [illegible] fences, shrubbery [illegible].

The amount of any unpaid taxes, assessments, water charges and sewer rents which the seller is obligated to pay and discharge with the interest and penalties thereon to a date not less than two business days after the date of closing title, may at the option of the seller be allowed to the purchaser out of the balance of the purchase price, provided official bills therefor with interest and penalties thereon figured to said date are furnished by the seller at the closing. If at the date of closing title there may be any other liens or encumbrances which the seller is obligated to pay and discharge, the seller may use any portion of the balance of the purchase price to satisfy the same, provided the seller shall have delivered to the purchaser at the closing of title instruments in recordable form and sufficient to satisfy such liens and encumbrances of record together with the cost of recording or filing said instruments. The purchaser, if request is made within a reasonable time prior to the date of closing of title, agrees to provide at the closing separate certified checks as requested, aggregating the amount of the balance of the purchase price, to facilitate the satisfaction of any such liens or encumbrances. The existence of any such taxes or other liens and encumbrances shall not be deemed objections to title if the seller shall comply with the foregoing requirements.

If a search of the title discloses judgments, bankruptcies or other returns against other persons having names the same as or similar to that of the seller, the seller will on request deliver to the purchaser an affidavit showing that such judgments, bankruptcies or other returns are not against the seller.

In the event that the seller is unable to convey title in accordance with the terms of this contract, the sole liability of the seller will be to refund to the purchaser the amount paid on account of the purchase price and to pay the net cost of examining the title, which cost is not to exceed the charges fixed by the New York Board of Title Underwriters, and the net cost of any survey made in connection therewith incurred by the purchaser, and upon such refund and payment being made this contract shall be considered canceled.

The deed shall be delivered upon the receipt of said payments at the office of Gerald Murray on Madison Avenue, Queens, N.Y. or at the office of lending institution

at 3 o'clock on 2/9 19 75

no broker

The parties agree that
brought about this sale ~~and the seller agrees to pay the commission at the rates established or adopted by the Board of Real Estate Brokers in the locality where the property is situated.~~

It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this contract, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this contract, made by the other. The purchaser has inspected the buildings standing on said premises and is thoroughly acquainted with their condition.

This agreement may not be changed or terminated orally. The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

If two or more persons constitute either the seller or the purchaser, the word "seller" or the word "purchaser" shall be construed as if it read "sellers" or "purchasers" whenever the sense of this agreement so requires.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto.

In presence of:

Eva D. Sullivan

Frieda Bell

Frieda Bell

NOTE: RISK OF LOSS. This form of contract contains no express provision as to risk of loss by fire or other casualty before delivery of the deed. Unless express provision is made, the provisions of Section 5-1311 of the General Obligations Law will apply. This section also places risk of loss upon purchaser if title or possession is transferred prior to delivery of the deed.

323A

RIDER ANNEXED TO AND
FORMING PART OF CONTRACT OF SALE,
DATED Oct 28 1975, MADE BY AND
BETWEEN EVE S. SILBERMAN AS SELLER,
AND Beers
AS PURCHASER

Said premises sold and shall be conveyed and taken subject to the following additional provisions:

The parties agree that these premises are sold "as is"; that the purchaser has inspected the premises and knows the condition thereof and that no representation or warranties with respect to the same have been made by or on behalf of the seller. In the event the seller is unable to convey good and marketable title free from encumbrances, restrictions, encroachments or other defects of title, except those in this contract specified, the purchaser shall have the option of taking such title to the premises as the seller can convey, and take such title without any reduction or abatement in selling price, and unless the purchaser take such title as the seller can convey, upon the return of the money paid hereunder plus the actual net cost of title examination where no title policy is issued, this contract shall be and become of no further force and effect and the parties hereto released of any and all further liability as against each other.

If at the time of closing of title, the premises shall have been affected by any lien or mortgage, which pursuant to the terms of this agreement are required to be discharged or satisfied by the seller, in such event, the seller may use the proceeds of this sale to satisfy the same of record prior to the closing of title provided proper instruments of discharge or satisfaction may be procured and proper allowance made to the purchaser for the recording and title company charges thereon.

The purchaser agrees to deliver to the attorney for the seller herein, at least 10 days prior to the closing, a list of any objections or violations which may appear on any proper examination of title, and if any objections or violations appear on said title examination, and cannot be cleared by the seller by the time set for closing of title, then the seller at his optiin, shall be entitled to a reasonable adjournment of the closing for the purpose of removing such objections and violations.

The parties waive the provisions of Section 5-1311 of the General Obligation Law. If prior to the date for closing title (a) all or a material part of the main building on the premises is destroyed by fire or the elements or by any cause beyond either party's control, or (b) all or a material part of the premises is taken by eminent domain, either paty may, by written notice to the other, elect to cancel this agreement prior to the date for closing title. In the event that either party shall so elect, both parties shall be relieved and released of and from any further liability hereunder, and the seller shall forthwith repay to the purchaser the amount paid upon the execution and delivery of this agreement. Unless this agreement is so cancelled, it shall remain in full force and effect, and the seller, upon closing of title, and the receipt of the purchase price, shall pay to the purchaser and sums of money collected by the seller

THE OBSERVANCE OF THE FOLLOWING SUGGESTIONS WILL

under policies of insurance or renewals thereof, insuring against the loss in question, after deducting any amounts which the seller shall have agreed or been obligated to pay for repairs or restoration of the damage. In addition, the seller shall assign, transfer and set over to the purchaser all the seller's right, title and interest in and to said policies and any further sums payable thereunder. If any part of the premises shall have been taken by eminent domain the seller shall assign, transfer and set over to the purchaser all the seller's right, title and interest in and to any awards that may be made for such taking. If prior to the date for closing of title (a) an immaterial part of the main buildings on the premises is destroyed by fire or the elements or by any cause beyond either party's control, or (b) an immaterial part of the premises is taken by eminent domain, neither party shall have the right to cancel this agreement and the purchaser shall be entitled to an equitable abatement of the purchase price, to the extent of the destruction or taking.

All appliances and articles or personal property included in this sale are sold "as is" and without any representation or warranty by the sellers as to the physical condition thereof, except that seller agrees to deliver said appliances in operating condition.

~~Purchaser further agrees that he will cooperate in any way necessary and execute any papers necessary should the sellers wish to apply to a bank to obtain a mortgage on the premises at a later date. It is further understood that should such a mortgage be obtained, it will be at the same interest herein, and will be at the sole expense of the sellers.~~

~~It is further understood that should title insurance be required, that the purchaser will pay the premium therefore on behalf of the seller, and~~ The mortgage tax of course will be paid by the purchaser.

The premises will be delivered vacant on closing. Seller represents that premises is a legal one-family dwelling as presently constructed.

The contract is subject to A. the purchaser securing a first mortgage for $20,000.00 at prevailing interest rate from lending institution for a 20 year period, which he agrees to make earnest effort to secure; in the event purchaser does not secure said mortgage within six weeks from the date hereof, then the purchaser shall have the right to cancel this contract and to a return of down payment on condition however, that he notify GERALD MURRAY, attorney for the seller in writing within six weeks plus five days from the date hereof of his inability to secure said mortgage; in the event said notification is not so made, this contract shall remain in full force and effect anything in this paragraph to the contrary notwithstanding.

THE OBSERVANCE OF THE FOLLOWING SUGGESTIONS WILL SAVE THE

B. Any state of facts an accurate survey may show, provided the same does not render title unmarketable.

C. Covenants, restrictions, easements and utility agreements, if any, of record, provided the same do not prohibit the present structures on the premises and the continued use thereof for the purpose for which the same are presently used.

The purchaser states that he and his immediate family first became aware that said premises were for sale only through a neighbor, namely BENJAMIN SPRECHER and not through any real estate organization or person of the agents thereof, and that he was never shown the house, or never became aware of the house being for sale by any real estate organization or the agents thereof.

Alice S. Silberman

Meyer Rudolf Beer

Frank Beer

THE OBSERVANCE OF THE FOLLOWING SUGGESTIONS WILL SAVE THE